120—517

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1287.

THE COUNTY OF CARTER, PLAINTIFF IN ERROR,

vs.

DAVID SINTON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

FILED NOVEMBER 15, 1886.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

error, if any there hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington on the first day of the next October term in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, at Covington, in said district, this 4th day of September, A. D. 1886, and of the Independence of the United States the 111th.

[Seal 6th Circuit Court, Ky. Dis., U. S. of America.]

JOSEPH C. FINNELL,
C. C. C., K. D.

Allowed by—
JNO. W. BARR, *Judge.*

4 Executed Sept. 6th, 1886, on Jos C. Finnell, cl'k United States circuit court, at Covington, by delivering to him a copy hereof."

A. J. GROSS, *U. S. M.*,
By B. F. WARNOCK, *D. M.*

5 *Assignment of Errors.*

Supreme Court of the United States.

THE COUNTY OF CARTER, Plaintiff in Error,

vs.

DAVID SINTON, Defendant in Error.

The County of Carter, plaintiff in error, says that in the record and proceedings and judgment herein errors to its prejudice have occurred as follows:

The court erred in overruling the general demurrer of the plaintiff in error to the petition or bill of complaint of the defendant in error.

In overruling the special demurrer of plaintiff in error to said petition.

In sustaining the motion of defendant in error that the answer of defendant in error be paragraphed.

In sustaining the motion of defendant in error to strike out of the answer of plaintiff in error paragraphs No-. 2, 3, 4, 6, 7, 8, 9, 10, and 11.

In sustaining the special demurrer of defendant in error to paragraphs No-. 1, 5, and 8 of said answer.

In tendering the judgment of June 16th, 1885, in favor of the defendant in error and against the plaintiff in error for the sum of

$29,12..54, with interest thereon at the rate and from the date specified in said judgment, together with the costs of defendant
6 in error, and in authorizing and allowing the writ of *fieri facias* to issue for said sum and interest and costs.

In rendering any judgment in favor of the defendant in error and against the plaintiff in error for any amount or sum, or upon any or either of the bonds or coupons enumerated in said judgment.

In not dismissing the action of the defendant in error at his costs.

Wherefore the plaintiff in error prays that the judgment aforesaid be reversed and the cause remanded with direction to dismiss the said action.

A. DUVALL,
Attorney for Plaintiff in Error.

7 Proceedings of the circuit court of the United States for the district of Kentucky, at Covington, at the regular May term, begun and held at the Federal court hall, in the city of Covington, on Monday, May 11th, A. D., 1885, and of our Independence the 109th year.

Present: Hon. John W. Barr, judge.

DAVID SINTON *against* THE COUNTY OF CARTER.

Be it remembered that heretofore, to wit, on the 1st day of November A. D. 1884, came the plaintiff and filed in the clerk's office of this court his petition herein.

Said petition is in words and figures as follows, viz:

Petition.

Circuit Court of the United States, District of Kentucky, held at Covington.

DAVID SINTON, Plaintiff,

vs.

THE COUNTY OF CARTER, Defendant.

The plaintiff, a citizen of Ohio, states that the defendant, a municipal corporation created by the laws of Kentucky and a
8 citizen of the last-named State, is indebteded to him in the sum of forty-four thousand eight hundred dollars, with interest thereon at the rate of six per centum per annum from maturity of said sums, as hereinafter set out, until paid, payable semi-annually on the 1st day of July and the 1st day of January of each and every year from the 1st day of July, 1878, until the 1st day of July, 1884, and that said indebtedness was contracted as follows, to wit:

For that whereas by an act of the General Assembly of the Commonwealth of Kentucky, approved January 9th, 1852, entitled "An act to incorporate the Lexington and Big Sandy Railroad Company," and "An act to amend the charter of the Lexington and Big Sandy Railroad Company," approved 1st of March, 1854, the said defendant was authorized to subscribe seventy-five thousand dollars to the capi-

tal stock of the Lexington and Big Sandy Railroad Company, a corporation created by the acts aforesaid, and, in payment of said subscription, the said defendant was empowered to borrow money, to pay which said loan said county was further authorized to issue its bonds for seventy-five thousand dollars, bearing interest from date, as security for any loan made defendant on that behalf or in payment of said stock:

9 Plaintiff says that, in pursuance of said authority, the said defendant did, on the — day of ——, 185–, subscribe seventy-five ($75,000) dollars to the capital stock of said Lexington and Big Sandy Railroad Company, and in payment thereof said defendant, by the order of the Carter county court, composed of the county judge and justices of the peace in commission thereof, did execute and make seventy-five bonds, dated — day of ——, 185–, sealed with the corporate seal of said county court of Carter and signed by the presiding judge of the county court and the clerk thereof.

2. Plaintiff states that by the express terms of each of said bonds the defendant (the County of Carter) acknowledged itself to be indebted to the said Lexington and Big Sandy Railroad Company in the sum of one thousand ($1,000) dollars, which it undertook and faithfully promised to pay to the said railroad company, or to any person to whom said company should order payment, thirty years thereafter, with six per centum per annum interest thereon, payable semi-annually at the Bank of America, New York, and for which

10 installment of interest so to mature on each of said bonds an interest or coupon warrant was attached to each of said bonds, whereby the defendant (the County of Carter) likewise undertook and promised to pay said several and respective installments of interest unto the bearer thereof, at the maturity of the said installment of interest or coupon warrant, at the place aforesaid, viz., Bank of America, in the city of New York.

The plaintiff further states and charges that afterwards, to wit, on the — day of ——, 185–, the said defendant did tender the said seventy-five bonds, with the coupons attached to each and every bond, unto the said Lexington and Big Sandy Railroad Company in payment of its subscription of seventy-five thousand ($75,000) dollars to the capital stock of said company; and the said railroad company did then and there accept and receive said bonds in payment and discharge of the aforesaid defendant's subscription to the capital stock.

The plaintiff further charges that afterwards, to wit, on the — day of ——, 185–, the said railroad company did sell a portion of said bonds in the market overt to divers persons unknown to plaintiff, and by its endorsements in blank on the back of said bonds,

11 and sealed with the corporate seal of said railroad company, and signed by its president, did make each and all of said bonds payable to bearer, and did deliver said bonds so endorsed, together with the coupons thereto annexed, unto the purchasers aforesaid.

The plaintiff avers that one Joseph C. Butler, a citizen of Ohio, became the owner, holder, and bearer of sixty-four of said bonds in

his own right; that he purchased the same for value before the maturity thereof, and one L. Worthington, a citizen of Ohio, became the owner and bearer and holder of ten of said bonds in his own right; that he purchased the same for value before maturity thereof.

The bonds aforesaid so owned and held by said Joseph C. Butler and said L. Worthington were Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75. A better description of said bonds cannot be given, because they have all been destroyed as hereinafter set forth.

Said L. Worthington on the — day of ——, 1878, transferred and delivered his ten bonds aforesaid to said Henry Peachey and Richard O. Butler, executors of J. C. Butler, dec'd.

12 The plaintiff further charges that suits have been instituted in this, the United States circuit court for the district of Kentucky, at Covington, Kentucky, by said Joseph C. Butler, on the sixty-four bonds aforesaid, for the recovery of the interest past due thereon, as shown by the coupons thereto attached held and owned by said Joseph C. Butler, who *having* died, said actions having been revived in the name of Henry Peachey and Richard O. Butler, executors of said Joseph C. Butler, dec'd. A trial was had in the court aforesaid, and a judgment was duly entered in the name of said Henry Peachey and Richard O. Butler, executors aforesaid, against the defendant, Carter County, for $81,373.83, with interest thereon from the 30th day of May, 1874, and $64.00 costs, and a further judgment for $36,519.40, with interest thereon from 15th April, 1876, and $66.15 costs, said judgments being for the aggregate sum of the interest warrants or coupons that were past due on the sixty-four bonds aforesaid and which remained wholly unpaid.

The plaintiff further charges that afterwards, to wit, on the — day of January, 1878, the defendant, Carter County, procured *a* passage of an act by the General Assembly of Kentucky, entitled "An

13 act authorizing the County of Carter, and those parts of Boyd and Elliott (counties) taken from (Carter County), to compromise and settle with the holders of the bonds and coupons of interest executed by Carter County in its subscription to the capital stock of the Lexington and Big Sandy Railroad Company, and to levy and collect a tax for that purpose."

The plaintiff further charges that the said defendant, by the act aforesaid of the General Assembly of the Commonwealth of Kentucky approved 30th January, 1878, was empowered to issue the bonds of Carter county and those parts of the counties of Elliott and Boyd taken from Carter county, bearing interest from date, to Henry Peachey and Richard O. Butler, executors of Joseph C. Butler, dec'd.

Plaintiff says, in pursuance of said authority, the said defendant did, on the — day of ——, 1878, by order of the Carter county court, composed of the presiding judge and a majority of the justices of the peace thereof in commission, *did* execute and make one hundred and nineteen bonds, dated 1st day of July, 1878, sealed with the corporate seal of Carter county and signed by the presiding judge

of said court and attested by the clerk thereof and made payable to Henry Peachey and Richard O. Butler, executors of Joseph C. Butler, dec'd, or bearer.

14 The order of the Carter county court was and is in words and figures as follows, to wit:

Carter County Court. June Term, 1878.

I, J. R. Ward, commissioner, appointed under the authority of the act of Assembly approved 30th January, 1878, to compromise and settle with the holders of the bonds of Carter county executed in aid of the construction of the Lexington and Big Sandy Railroad Company, having reported the following agreement with Henry Peachey and Richard O. Butler, executors of Joseph C. Butler, dec'd, for the settlement of sixty-four bonds and coupons thereon and for the *pro rata* of sixty-one bonds in two judgments in their favor against Carter county on coupons on the bonds of said county in the United States circuit court for the Kentucky district, at Covington, to wit:

"Agreement made and entered into by and between J. R. Ward, commissioner, appointed by the Carter county court under authority of an act of the General Assembly of Kentucky, approved 30th January, 1878, and Henry Peachey and Richard O. Butler, executors of Joseph C. Butler, dec'd, to wit:

15 The said executors hereby agree to surrender unto the county court of Carter county sixty-four of the bonds executed in aid of the construction of the Lexington and Big Sandy railroad, with all unpaid interest coupons thereon, and to relinquish unto said county court the *pro rata* of sixty-one bonds in two certain judgments rendered in their favor by the United States circuit court, at Covington, for the Kentucky district against the said county of Carter, viz: Judgment for $81,373.68, with interest thereon from the 30th May, 1874, and $64.00 costs; and judgment for $36.519.40, with interest thereon from 15th April, 1876, and $66.15 costs.

In consideration of said surrender and relinquishment it is agreed on the part of said county court that the said court shall execute, as provided in said act of Assembly, the bonds of said county of Carter and those parts of the counties of Elliott and Boyd taken from Carter payable to the said Henry Peachey and Richard O. Butler, executors of Joseph C. Butler, or bearer, of the denomination of one thousand dollars and one hundred and three in number, with semi-annual interest warrants or coupons of thirty dollars each, bearing interest at the rate of six per centum per annum, on said bonds.

16 Said bonds are to bear date the 1st day of July, 1878, the principal of said bonds to be paid in annual installments, to wit: Six of said bonds payable in one year from date; six of said bonds payable in two years from said date, and seven thereof payable each year annually thereafter until the end of the term of fifteen years from the date of said bonds.

Upon the delivery of said bonds and coupons attached as aforesaid the said sixty-four bonds and coupons therein and a receipt against the aforesaid *pro rata* of said judgments will be executed

and surrended to said county court by said executors, all of which is to be done on or before the said 1st day of July, 1878.

Witness the hand of commissioner for Carter county and Richard O. Butler, executor of Joseph C. Butler, deceased, this 11th day of June, 1878.

J. R. WARD, *Commis'i'n.*,
For HENRY PEACHEY.
RICHARD O. BUTLER, *Executor.*

It is now ordered by the court that the said compromise agreement be, and the same is hereby, approved and confirmed by this court on behalf of the said County of Carter and those parts of Boyd and Elliott counties taken from Carter county.

17 It is further ordered that there be executed one hundred and three bonds of one thousand dollars each of the counties of Carter and those parts of Boyd and Elliott counties taken from Carter county, with semi-annual six per centum interest coupons attached to each, dated 1st day of July, 1878, and payable as follows, viz:

1. Six of said bonds payable in one year from the date.
2. Six payable in two years.
3. Seven payable in three years.
4. Seven payable in four years.
5. Seven payable in five years.
6. Seven payable in six years.
7. Seven payable in seven years.
8. Seven payable in eight years.
9. Seven payable in nine years.
10. Seven payable in ten years.
11. Seven payable in eleven years.
12. Seven payable in twelve years.
13. Seven payable in thirteen years.
14. Seven payable in fourteen years.
15. Seven payable in fifteen years from date.

That they be signed by the presiding judge of this court and attested by the clerk of this court, with the seal of the court.

It is also further ordered that when said bonds are so signed, attested, and sealed the same be delivered to the said executors of said Joseph C. Butler by E. P. Davis, the clerk of this court,

18 upon the delivery by them of the sixty-four bonds and coupons and the execution and delivery of a proper receipt for the *pro rata* of said two judgments as provided in the compromise agreement with said executors this day made and approved by this court.

Plaintiff further states that in pursuance to said authority the said defendant did, on the — day of May, 1879, by order of the Carter county court, composed as aforesaid, *did* execute and make sixteen (16) of said bonds, dated 1st day of July, 1878, sealed with the corporate seal of Carter county and signed by the presiding judge of the Carter county court and attested by the clerk thereof and

made payable to Henry Peachey and Richard O. Butler, executors of Joseph C. Butler, dec'd, or bearer.

The order of the Carter county court aforesaid was and [is] in the following words and figures, viz:

Carter County Court. January Term, 1879.

It appearing to the satisfaction of the court that at the last June term of this court L. Worthington, through R. O. Butler and Henry Peachey, executors of Joseph C. Butler, deceased, made a proposition to settle and compromise the ten
19 several bonds issued by Carter county in its subscription to the capital stock of the Lexington and Big Sandy Railroad Company held by him, which proposition, having been then considered by the court, was then accepted by it, acting for the county of Carter, and those parts of the counties of Boyd and Elliott taken from Carter county, it is now, therefore, ordered by the court—a majority of the justices of the peace in commission in Carter county, and the judge of the Carter county court, being present, concurring therein—that there be executed sixteen (16) bonds of one thousand dollars each of the county of Carter and those parts of the counties of Boyd and Elliott taken from Carter county, with semi-annual six-per-centum interest coupons attached to each, dated 1st July, 1878, and payable as follows, viz:

"One of the said bonds payable one year from date, which shall be numbered 104.

2. One due two years from date, numbered No. 105.
3. One due three years from date, numbered No. 106.
4. One due four years from date, numbered No. 107.
5. One due five years from date, numbered No. 108.
6. One due six years from date, numbered No. 109.
7. One due seven years from date, numbered No. 110.
8. One due eight years from date, numbered No. 111.
9. One due nine years from date, numbered No. 112.
10. One due ten years from date, numbered No. 113.
11. One due eleven years from date, numbered No. 114.
12. One due twelve years from date, numbered No. 115.
20 13. One due thirteen years from date, numbered No. 116.
14. One due fourteen years from date, nnmbered No. 117.
15. One due fifteen years from date, numbered No. 118.
16. One due sixteen years from date, numbered No. 119."

That they be signed by the presiding judge of this court, and attested by the clerk of this county with the seal of the court.

It is further ordered that when the bonds [are] so signed and attested and sealed the same shall be delivered to the executors of the said J. C. Butler, dec'd, by E. C. Davis, clerk of this court, upon the delivery by them of the said ten bonds and coupons of interest attached thereto held by them for said L. Worthington, and the execution by them of the proper receipts therefor and receipt and acquittance in full [of] all judgments in their favor on account of the bonds surrendered.

The plaintiff states that by the express terms of each of said

bonds the defendant acknowledged itself indebted to said Henry Peachey and Richard O. Butler, executors of Joseph C. Butler, dec'd, or bearer, in the sum of one thousand ($1,000) dollars, which it undertook and faithfully promised to pay to said Henry Peachey and Richard O. Butler, executors aforesaid, or bearer, as follows, viz:

Seven in one year thereafter.
Seven in two years thereafter.
Eight (8) in three years thereafter.
Eight (8) in four years thereafter.
21 Eight (8) in five years thereafter.
Eight (8) in six years thereafter.
Eight (8) in seven years thereafter.
Eight (8) in eight years thereafter.
Eight (8) in nine years thereafter.
Eight (8) in ten years thereafter.
Eight (8) in eleven years thereafter.
Eight (8) in twelve years thereafter.
Eight (8) in thirteen years thereafter.
Eight (8) in fourteen years thereafter.
Eight (8) in fifteen years thereafter—

With six per centum per annum interest thereon, payable semi-annually at the La Fayette Bank in Cincinnati, Ohio, and for which installments of interest so to mature on each of said bonds an interest or coupon warrant was attached to each of said bonds, whereby the defendant likewise undertook and faithfully promised to pay said several and respective installments of interest unto the bearer thereof at maturity of said installment of interest or coupon warrant, and at the place aforesaid, viz., the La Fayette Bank in the city of Cincinnati, Ohio.

The plaintiff further states and charges that afterwards, to wit, on the — day of ——, 187–, the said defendant did tender the said one hundred and nineteen (119) bonds, with coupons attached to each and every bond, unto the said Henry Peachey and Richard
22 O. Butler, executors of Joseph C. Butler, deceased, in settlement of the sixty-four bonds and the ten bonds with the interest coupons thereto attached, and in discharge and payment of the *pro rata* of the two judgments aforesaid; and the said Henry Peachey and Richard O. Butler, executors of Joseph C. Butler, deceased aforesaid, did then and there accept and receive the said 119 bonds in payment and discharge of the aforesaid seventy-four (74) old bonds and coupons of interest thereto attached and the *pro rata* of the said judgment for $81,373.68, with interest thereon from 30th May, 1874, and $66.15 costs, and the said judgment of $36,519.40 with interest from 15th April, 1876, and $66.15 costs; and the said Henry Peachey and Richard O. Butler, executors aforesaid, did deliver to defendant said seventy-four old bonds, and did execute and deliver to defendant a proper receipt against said two judgments, in consideration of which defendant did deliver to them, said Henry Peachey and Richard O. Butler, executors aforesaid, the one hundred and nineteen bonds, dated 1st July, 1878, with coupons attached as aforesaid.

The plaintiff further states that the Carter county court at its May term, 1879, composed as aforesaid, burned up and destroyed
23 the seventy-four old bonds surrendered to defendant as aforesaid, and made and entered an order of said court in words and figures as follows, to wit:

Carter County Court. May Term, May 12th, 1879.

It appearing to the court that the clerk of this court has received from the executors of Joseph C. Butler, dec'd, bonds Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, (J. C. F., clerk,) 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, and 75, executed by Carter county in aid of the Lexington and Big Sandy Railroad Company, and they being commercial paper, it is ordered that the whole of said bonds and coupons be destroyed by the clerk of this court—which he did.

The plaintiff further states and charges that after defendant had subscribed seventy-five thousand dollars to the capital stock of the Lexington and Big Sandy Railroad Company and had issued its bonds, and had transferred the same to said railroad company in payment of said subscription as aforesaid, to wit, on the — day of ——, 185–, the county of Boyd was created by the laws of
24 Kentucky, and on the — day of ——, 187–, the county of Elliott was likewise created. The county of Boyd and the county of Elliott *was* made by the laws creating said counties portions of the territory, property, and tax-payers of the defendant, but it was provided in said acts creating Boyd and Elliott counties that nothing therein contained should operate to release said territory, property, and tax-payers so taken from Carter county from liability or exempt such from paying said bonds and coupons issued as aforesaid before the formation of said counties of Boyd and Elliott.

The plaintiff further charges that afterwards, to wit, on the — day of ——, 1878, the said Henry Peachey and Richard O. Butler, executors of Joseph C. Butler, dec'd, did sell a portion of said bonds in the market overt- to divers persons unknown to plaintiff, each of said bonds and coupons being made payable to bearer, and did deliver said bonds, together with the coupons thereto annexed, unto the purchasers aforesaid.

The plaintiff avers that he is the owner and holder and bearer of seventy-six of said defendant's bonds in his own right; that he purchased the same for value before the maturity thereof, viz: Nos.
25 5, 11, 12, 105, 14, 18, 19, 13, 106, 20, 21, 22, 23, 24, 26, 27, 28, 29, 31, 33, 108, 35, 37, 40, 109, 41, 42, 44, 45, 46, 47, 49, 51, 52, 53, 54, 55, 56, 58, 59, 60, 61, 63, 65, 66, 67, 68, 70, 72, 73, 74, 75, 77, 79, 80, 81, 82, 84, 86, 87, 89, 90, 91, 93, 94, 95, 96, 98, 100, 101, 102, 110, 111, 112, 113, and 117, together with five hundred and forty coupons of thirty dollars each attached to said seventy-six bonds, respectively maturing on the 1st days of July and January of each and every year between Jan'y 1st, 1879, and July 1st, 1884.

Plaintiff further charges that of the seventy-six bonds of the defendant so owned and held by him as aforesaid twenty-five thereof, dated 1 July, 1878, for one thousand dollars each, with the interest warrants or coupons attached thereto, are past due and remain wholly unpaid, viz: Bonds, one marked A, No. 5; three, A, Nos. 11, 12, and 105; five, A, Nos. 14, 18, 19, 13, and 106; six, A, Nos. 20, 21, 22, 23, 24, and 26; six, A, Nos. 27, 28, 29 (J. C. F., clerk), 31, 33, and 108, and four, A, Nos. 35, 37, 40, and 109, together with — coupons of thirty dollars each attached to said twenty-five bonds, respectively maturing on the 1st day of July and January of each and every year between the 1st day of July, 1878, until the maturity of the bonds aforesaid and the first day of July, 1884, except bonds Nos. 5, 11, 105, 13, 14, 18, 106, 20, 21, 22, 24, 27, 28, 29, 31, and 108, from each of which said bonds coupons have been detached.

26 Plaintiff avers that there are attached to said bonds Nos. 12, 19, 23, 26, 33, 35, 37, 40, and 109 coupons for thirty dollars each, all of which are now past due, as follows:

On bond No. 12 the following coupons: One for $30, due Jan'y 1st, 1879; one for $30, — July 1st, 1879; one for $30, due 1st Jan'y, 1880; one for $30, due 1 July, 1880; all of which last-described four (4) coupons for thirty dollars remain wholly due and unpaid.

Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant — each of said four (4) coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons, on the 1st day of January, 1879, and on the 1st day of July and the 1st day of January of each successive year from said 1st day of January, 1879, until the 1st day of July, 1880.

And plaintiff states that said bond No. 12, for one thousand dollars aforesaid, dated 1 July, 1878, and due three years after said date, matured on the 1st day of July, 1881, and is now due and wholly unpaid; and plaintiff further states that an action hath accrued to plaintiff to recover of said defendant upon said cause of action last recited, viz., one thousand dollars, with interest thereon from 1 July, 1881.

27 2.

Plaintiff also states that one of said one hundred and nineteen bonds executed and delivered by defendant, purchased by plaintiff for value, as hereinbefore set out, viz., bond five, for one thousand dollars, dated 1st of July, 1878, and due one year from said date, matured on the 1st day of July, 1879, and is now due and wholly unpaid.

And plaintiff further states that an action hath accrued to plaintiff to recover of said defendant upon said cause of action above last named, viz., one thousand dollars, with interest thereon from 1st day of July, 1879.

3.

Plaintiff also states of said one hundred and nineteen bonds executed and delivered by defendant, purchased by plaintiff for value,

as hereinbefore set out, bond No. 11, for one thousand dollars, dated July 1st, 1878, and due two years after said date, matured on the 1st day of July, 1880, and is now due and wholly unpaid; and plaintiff further states that action hath accrued to plaintiff to recover of said defendant upon said cause of action above last recited, viz., one thousand dollars, with interest thereon from 1st day of July, 1880.

4.

28 Plaintiff also states that one of said one hundred and nineteen bonds executed and delivered by defendant and purchased by pl'ff for value, as hereinbefore set out, viz., bond No. 105, for one thousand dollars, dated 1st July, 1878, and due two years after said date, matured on the 1st day of July, 1880, and is now due and wholly unpaid; and plaintiff further states that an action hath accrued to plaintiff to recover of said defendant upon said cause of action above last recited, viz., one thousand dollars, with interest thereon from July 1st, 1880.

5.

Plaintiff also states that one of said seventy-six bonds executed and delivered by defendant, purchased by plaintiff for value, as hereinbefore set out, viz., bond No. 13, for one thousand dollars, dated 1st July, 1878, and due three years after said date, matured on 1st day of July, 1881, and is now due and wholly unpaid; and plaintiff further states that an action hath accrued to plaintiff to recover of said defendant upon said cause of action above last recited, viz., one thousand dollars, with interest thereon from the 1st day of July, 1881.

6.

Plaintiff also states that one of said seventy-six bonds executed and delived by defendant, purchased by plaintiff for value, as hereinbefore set out, viz., bond No. 14, for one thousand dollars,
29 dated 1st July, 1878, and due three years after date, matured on the 1st day of July 1881, and is now due and wholly unpaid; and plaintiff further states that an action hath accrued to plaintiff to recover of said defendant upon said cause of action above last recited, viz., one thousand dollars, with interest thereon from 1 July, 1881.

7.

Plaintiff also states that one of said seventy-six bonds executed and delivered by defendant, purchased by plaintiff for value, as hereinbefore set out, viz., bond No. 18, for one thousand dollars, dated 1st July, 1878, and due three years after said date, matured on the 1st day of July, 1881, and is now due and wholly unpaid; and plaintiff further states than an action hath accrued to plaintiff to recover of said defendent upon said cause of action above last set out, viz., one thousand dollars, with interest thereon from 1 July, 1881.

8.

Plaintiff also states that one of said seventy-six bonds executed and delivered by defendant, purchased by plaintiff for value, as hereinbefore set out, viz., bond No. 106, for one thousand dollars, dated 1 July, 1878, and due three years after date, matured on the 1st July, 1881, and is now due and wholly unpaid; and the plaintiff further states that an action hath accrued to plaintiff to recover of said defendant upon said cause of action above last recited, viz., one thousand dollars, with interest thereon from July 1, 1881.

9.

Plaintiff also states that of said bonds executed and delivered by defendant and purchased by plaintiff for value, as hereinbefore set out, viz., bond No. 19, there are attached six interest coupon warrants thereon for thirty dollars each, and each of which matured as follows:

One for $30, due 1st January, 1879;
One for $30, due 1st July, 1879;
One for $30, due 1st January, 1880;
One for $30, due 1st July, 1880;
One for $30, due 1st January, 1881;
And one for $30, due 1st July, 1881;

All of which last-described six coupons for thirty dollars each remain wholly due and unpaid.

Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of said six coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons, on the 1st day of January, 1879, and on the 1st day of July and the 1st day of January of each successive year from said 1 day of January, 1879, until the 1st day of July, 1881.

31 And plaintiff states that said bond No. 19, for one thousand dollars aforesaid, dated 1 July, 1878, and due three years after said date, matured on the 1st day of July, 1881, and is now due and wholly unpaid; and plaintiff further states that an action hath accrued to plaintiff to recover of said defendant upon said cause of action above last recited, viz., one thousand dollars, with interest thereon from 1st July, 1881.

10.

Plaintiff also states that four of said seventy-six bonds executed and delivered by defendant, purchased by plaintiff for value, as hereinbefore set out, viz., bonds Nos. 20, 21, 22, and 24, for one thousand dollars each, dated 1st July, 1878, and due four years after said date, *each* matured on the 1st day of July, 1882, and are each now due and wholly unpaid.

And plaintiff further states that an action hath accrued to plaintiff to recover of said defendant upon said cause of action above-last recited, viz., one thousand dollars, with interest thereon from 1st

July, 1882, and the further sum of one thousand dollars, with interest thereon from the same date, and the further sum of one thousand dollars, with interest from the same time, and the further sum of one thousand dollars, with interest thereon from the date aforesaid, to wit, 1st July, 1882.

32

11.

Plaintiff also states that one of said seventy-six bonds executed and delivered by defendant, purchased by the plaintiff for value, as herein set out, viz., bond No. 23, for one thousand dollars, dated 1st July, 1878, and due four (4) years after said date, matured on the 1st day of July, 1882, and is now due and wholly unpaid; and plaintiff further states that an action hath accrued to plaintiff to recover of said defendant upon said cause of action above, viz., one thousand dollars, with interest thereon from the 1st day of July, 1882.

Plaintiff also states that to the said bond No. 23 there *was* attached six interest coupon warrants thereon for thirty dollars, and each of which matured as follows:

One for $30, due Jan'y 1, 1880, with interest from said date.
One for $30, due July 1, 1880, with interest from that date.
One for $30, due Jan'y 1, 1881, with interest from that date.
One for $30, due July 1, 1881, with interest from that date.
One for $30, due Jan'y 1, 1882, with interest from that date.
One for $30, due July 1, 1882, with interest from that date.

All of which said six coupons, amounting to $180, are now wholly due and unpaid.

And plaintiff further states that an action hath accrued to the plaintiff to recover of said defendant upon each of said causes of action above last recited, viz., thirty dollars upon each and

33 every coupon attached to said bond No. 23, falling due, respectively, on the 1st day of January, 1879, and on the 1st day of July and January of each and every successive year from 1st day of January, 1880, until the 1st day of July, 1882, with interest upon the amount of each one of said six coupons from the respective maturity of each until paid.

12.

Plaintiff also states that another of said seventy-six bonds held and owned by plaintiff, as hereinbefore set out, viz., bond No. 26, for one thousand dollars, dated July 1, 1878, and due four (4) years after said date, matured on the 1st day of July, 1882, and is now due and wholly unpaid; and plaintiff further states that an action hath accrued to the plaintiff to recover of said defendant upon said cause of action above set out, viz., one thousand dollars, with interest thereon from July 1st, 1882.

And plaintiff further states that to said bond No. 26 — three interest coupon warrants thereon for thirty dollars each, and each of which matured as follows: One coupon for $30, which fell due July 1st, 1881, with interest from date; one coupon for $30, which fell

due January 1st, 1882, with interest from date; one coupon for $30, which fell due July 1st, 1882, with interest from date.

34 All of which three coupon warrants last recited (amounting to $90), with interest upon each of said coupons from the date of their respective maturities of each, as above set out, all of which are due and unpaid, and for the recovery of each of which a cause of action hath accrued to plaintiff to recover of said defendant upon each of said six coupons attached to said bond No. 26, thirty dollars, with interest from their respective dates at which each of said six coupons became due, as last above recited, until paid.

13.

Plaintiff also states that five (5) of said seventy-six bonds executed and delivered by defendant, purchased by the plaintiff for value, as hereinbefore set out, viz., bonds Nos. 27, 28, 29, 31, and 108, for one thousand dollars each, dated 1st July, 1878, and due five years after said date, each matured on the 1st day of July, 1883, and are each now due and wholly unpaid; and plaintiff further states that an action hath accrued to the plaintiff to recover of said defendant upon said cause of action last recited, viz, one thousand dollars, with interest thereon from the 1st day of July, 1883, and the further sum of one thousand dollars, with interest from the same date, and

35 the further sum of one thousand dollars, with interest thereon from the same date, and the further sum of one thousand dollars, with interest thereon from the same date, and the further sum of one thousand dollars, with interest thereon from the same date, viz., July 1, 1883 (the coupons of each of said bonds having been detached).

14.

Plaintiff also states that one of said seventy-six bonds executed and delivered by defendant and held and owned by him, as hereinbefore set out and described, viz., bond No. 33, for one thousand dollars, dated July 1, 1878, and due five years after said date, matured on the 1st day of July, 1883, and is now due and wholly unpaid; and plaintiff further states that an action hath accrued to plaintiff to recover of said defendant upon said cause of action above last set out, viz., one thousand dollars, with interest thereon from 1 July, 1883.

Plaintiff further states that to said bond No. 33 there were attached ten (10) coupon warrants, which matured as follows: One for $30, due January 1, 1879; one for $30, due 1 July, 1879; one for $30, due 1 January, 1880; one for $30, due 1 July, 1880; one for $30, due 1 January, 1881; one for $30, due 1 July, 1881; one for $30, due 1 January, 1882; one for $30, [due] July 1, 1882; one for $30, due January 1, 1883; one for $30, due July 1, 1883—

36 All of which ten coupons, amounting to $300, are now wholly due and unpaid; and plaintiff further states that an action hath accrued to plaintiff to recover of said defendant upon each of said causes of action last recited, viz., thirty dollars upon each and every coupon attached to said bond No. 33, falling due

respectively on the first day of January, 1879, and on the first day of July and January of each and every successive year from the 1st day of January, 1879, until the 1st day of July, 1883, with interest upon the amount of each one of said ten coupons from the respective maturity of each until paid.

15.

Plaintiff also states that one of said seventy-six bonds executed and delivered by defendant, purchased by plaintiff for value, as hereinbefore set out, viz., bond No. 35, for one thousand dollars, dated July 1, 1878, and due six years after said date, matured on the 1st day of July, 1884, and is now due and wholly unpaid; and plaintiff further states that an action hath accrued to plaintiff to recover of said defendant upon said cause of action above last set out, viz., one thousand dollars, with interest thereon from 1 July, 1884.

37 Plaintiff further states that to said bond No. 35 there were attached ten interest coupon warrants, which matured as follows: One for $30, due Jan'y 1, 1880; one for $30, due July 1, 1880; one for $30, due January 1, 1881; one for $30, due July 1, 1881; one for $30, due January 1, 1882; one for $30, due July 1, 1882; one for $30, due January 1, 1883; one for $30, due July 1, 1883; one for $30, due January 1, 1884, and one for $30, due July 1, 1884.

All of which ten coupon warrants last recited (amounting to $300), with interest upon each of said coupons from the date *from* the respective maturities of each, as above set out, and all of which are due and unpaid, and for the recovery of each of which a cause of action hath accrued to plaintiff to recover of said defendant upon each of said coupons attached to said bond No. 35 thirty dollars *each*, with interest from their respective dates at which each of said coupons became due, as last above recited, until paid.

16

Plaintiff also states that one of said seventy-six bonds executed and delivered by defendant, purchased by plaintiff for value, as hereinbefore set out, viz., bond No. 37, for one thousand dol-

38 lars, dated 1 July, 1878, and due six years after said date, matured on the 1 day of July, 1884, and is now due and wholly unpaid; and plaintiff further states that an action hath accrued to plaintiff to recover of said defendant upon said cause of action above set out, viz., one thousand dollars, with interest thereon from 1 July, 1884.

Plaintiff further states that to said bond No. 37 there were attached ten interest coupon warrants, which matured as follows, to wit: One for $30, due January 1, 1880; one for $30, due July 1, 1880; one for $30, due January 1, 1881; one for $30, due July 1, 1881; one for $30, due January 1, 1882; one for $30, due July 1, 1882; one for $30, due January 1, 1883; one for $30, due July 1, 1883; one for $30, due January 1, 1884, and one for $30, due July 1, 1884; all of which ten coupon warrants last recited (amounting

to $300), with interest upon each of said coupons from the date of their respective maturities, as above set out, and all of which are due and unpaid, and for the recovery of each of which a cause of action hath accrued to plaintiff to recover of said defendant upon each of said ten coupons attached to said bond No. 37 thirty dollars, with interest from their respective dates at which each of said ten coupons became due, as last above recited.

17.

39 Plaintiff also states that one of said seventy-six bonds executed and delivered by defendant, purchased by plaintiff for value, as hereinbefore set out, viz., bond No. 40, for one thousand dollars, dated 1 July, 1878, and due six years after said date, matured on the first day of July, 1884, and is now due and wholly unpaid; and plaintiff further states that an action hath accrued to plaintiff to recover of said defendant upon said cause of action above last recited, viz., one thousand dollars, with interest thereon from 1 July, 1884.

All of which ten coupon warrants last recited (amounting to $300), with interest upon each of said coupons from the date of their respective maturities, as above set forth, and all of which are due and unpaid, and for the recovery of each of which a cause of action hath accrued to plaintiff to recover from said defendant upon each of said ten coupons attached to said bond No. 40 thirty dollars, with interest from their respective dates at which each of said ten coupons became due, as last above recited.

18.

Plaintiff also states that one of said seventy-six bonds executed and delivered by defendant, purchased by plaintiff for value,
40 as hereinbefore set out, viz., bond No. 109, for one thousand dollars, dated 1 July, 1878, and due six years thereafter, matured on the 1 day of July, 1884, and is now wholly due and unpaid.

And plaintiff further states that an action hath accrued to plaintiff to recover of said defendant upon said cause of action above last set out, viz., one thousand dollars, with interest thereon from 1 July, 1884.

Plaintiff further states that to said bond No. 109 there were attached ten interest coupon warrants which matured as follows: One for $30 due January 1, 1880; one for $30 due July 1, 1880; one for $30 due January 1, 1881; one for $30 due July 1, 1881; one for $30 due January 1, 1882; one for $30 due July 1, 1882; one for $30 due January 1, 1883; one for $30 due July 1, 1883; one for $30 due January 1, 1884; one for $30 due July 1, 1884.

All of which ten coupon warrants last recited (amounting to $300), with interest upon each of said coupons from the date of their respective maturities, as above set out, and all of which are due and unpaid, and for the recovery of each of which a cause of action hath accrued to plaintiff to recover from said defendant upon each

of said ten coupons attached to said bond No. 109 thirty
41 dollars, with interest from their respective dates at which each of said ten coupons have become due, as last above recited.

19.

Plaintiff also states that another of said seventy-six bonds held and owned by plaintiff, as hereinbefore set out, viz., bond No. 41, to which there were attached twelve interest coupon warrants thereon for thirty dollars each, and all of which, each matured as follows:

One for $30, due January 1, 1879; one for $30, due July 1, 1879; one coupon for $30, which fell due 1 January, 1880, with interest from that date; one coupon for $30, which fell due 1st day of July, 1880, with interest from that date; one coupon for $30, due January, 1881, with interest from that date; one coupon for $30, due 1 July, 1881; one coupon for $30, due 1 January, 1882; one coupon for $30, due 1 July, 1882; one coupon for $30, due 1 January, 1883; one coupon for $30, due 1 July, 1883; one coupon for $30, due 1 January, 1884, and one coupon for $30, due 1 July, 1884.

All of which ten (10) coupons, amounting to $300, are now wholly due and unpaid; and plaintiff further states that an action hath accrued to him to recover of said defendant upon each of the
42 said causes of action above last recited, viz., thirty dollars upon each and every coupon attached to said bond No. 41 falling due, respectively, on the 1st day of January, 1879, and on the 1st day of July and January of each and every successive year from the 1st day of January, 1879, until the 1st day of July, 1884, with interest upon the amount of each one of said twelve coupons.

20.

Plaintiff also states that another of said seventy-six bonds held and owned by plaintiff as hereinbefore set out, viz, bond No. 42, to which there *was* attached ten interest coupon warrants thereon for thirty dollars each, and each of which, matured as follows, to wit:

One for $30, due 1 January, 1880;
One for $30, due 1 July, 1880;
One for $30, due 1 January, 1881;
One for $30, due 1 July, 1881;
One for $30, due 1 January, 1882;
One for $30, due 1 July, 1882;
One for $30, due 1 January, 1883;
One for $30, due 1 July, 1883;
One for $30, due 1 January, 1884;
And One for $30, due 1 July, 1884;

All of which ten (10) coupon warrants last recited, amounting to $300, with interest upon each from the date of their respective maturities, as above set out, and all of which are due and wholly unpaid, and for the recovery of each of which a cause of action
43 hath accrued to plaintiff to recover from said defendant upon each of said ten (10) coupons attached to said bond No. 42

thirty dollars, with interest from their respective dates at which each of said twelve coupons became due, as last above recited.

21.

Plaintiff also states that one of said seventy-six bonds held and owned by him, as hereinbefore set out, viz., bond No. 44, to which there was attached twelve interest coupon warrants thereon for thirty dollars each, and ten of which, each matured as follows:

One for $30, due January 1, 1880;
One for $30, due July 1, 1880;
One for $30, due January 1, 1881;
One for $30, due July 1, 1881;
One for $30, due January 1, 1882;
One for $30, due July 1, 1882;
One for $30, due January 1, 1883;
One for $30, due July 1, 1883;
One for $30, due January 1, 1884;
And one for $30, due July 1, 1884;

All of which ten coupons, amounting to $300, are now wholly due and unpaid; and plaintiff further states that an action hath accrued to the plaintiff to recover of said defendant upon each of said causes of action above last recited, viz., thirty dollars upon each and every coupon attached to said bond No. 44 falling due, respectively,
44 on the 1st day of January, 1880, and on the 1 day of July and January of each and every successive year from 1 day of January, 1880, until 1st day of July, 1884, with interest upon the amount of each one of said ten coupons from the respective maturities of each until paid.

22.

Plaintiff also states that to four other of the seventy-six bonds held and owned by him as hereinbefore set out, viz., bonds Nos. 45, 46, 47, and 110, there are attached to each of said bonds twelve (12) coupons for thirty dollars each, of which ten on each of said four bonds are now due and unpaid as follows: On bond No. 45 the following coupons:

One for $30, due 1 day of January, 1880.
One for $30, due 1 day of July, 1880.
One for $30, due 1 day of January, 1881.
One for $30, due 1 day of July, 1881.
One for $30, due 1 day of January, 1882.
One for $30, due 1 day of July, 1882.
One for $30, due 1 day of January, 1883.
One for $30, due 1 day of July, 1883.
One for $30, due 1 day of January, 1884.
One for $30, due 1 day of July, 1884.

All of said last-named ten coupons for thirty dollars each remain wholly due and unpaid.

Plaintiff states that by reason of the premises an action hath ac-

crued to him to recover from the defendant upon each of the
45 several causes of action aforesaid upon each of the ten coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons, on the 1st day of January, 1880, and on the 1st day- of January and July of each successive year from said 1st day of January, 1880, until 1st day of July, 1884.

23.

Plaintiff also states that another of said four bonds last set forth held and owned by plaintiff, as hereinbefore set out, viz., bond No. 46, to which there were attached ten interest coupon warrants thereon for thirty dollars each, and each of which matured as follows:

One for $30 due January 1, 1880.
One for $30, due July 1, 1880.
One for $30, due January 1, 1881.
One for $30, due July 1, 1881.
One for $30, due January 1, 1882.
One for $30, due July 1, 1882.
One for $30, due January 1, 1883.
One for $30, due July 1, 1883.
One for $30, due January 1, 1884;
And one for $30, due July 1, 1884;

All of which said last-described ten coupons for thirty dollars each remain wholly due and unpaid.

Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of the
46 several causes of action aforesaid upon each of said ten coupons the sum of thirty dollars each, with interest thereon from the date of the respective maturities of each of said coupons on the 1st day of January, 1880, and on the 1st day- of January and July of each successive year, from the 1st day of January, 1880, until the 1st day of July, 1884.

24.

Plaintiff also states that another of said four bonds held and owned by plaintiff, as hereinbefore set out, viz, bond No. 47, to which there were attached ten coupon warrants thereon for thirty dollars each, and each of which matured as follows, to wit:

One for $30, due 1 January, 1880.
One for $30, due 1 July, 1880.
One for $30, due 1 January, 1881.
One for $30, due 1 July, 1881.
One for $30, due 1 January, 1882.
One for $30, due 1 July, 1882.
One for $30, due 1 January, 1883.
One for $30, due 1 July, 1883.
One for $30, due 1 January, 1884.
One for $30, due 1 July, 1884.

All of which last-described ten coupons for thirty dollars each remain wholly due and unpaid.

47 Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of the several causes of action aforesaid upon each of said ten coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons, on the 1 day of January, 1880, and on the 1st day of July and 1st day of January of each successive year from said 1st day of January, 1884.

25.

Plaintiff also states that another of said four bonds last set out and owned and held by plaintiff, as hereinbefore set out, viz, bond one hundred and ten, to which were attached ten interest coupon warrants thereon for thirty dollars each, and each of which matured as follows:

One for $30, due January 1, 1880.
One for $30, due July 1, 1880.
One for $30, due January 1, 1881.
One for $30, due July 1, 1881.
One for $30, due January 1, 1882.
One for $30, due July 1, 1882.
One for $30, due January 1, 1883.
One for $30, due July 1, 1883.
One for $30, due January 1, 1884.
One for $30, due July 1, 1884.

All of which last-described ten coupons for thirty dollars each remain wholly due and unpaid.

48 Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of the several causes of action aforesaid upon each of said ten coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons, on the 1st day of January, 1880, and on the 1st day of July and 1st day of Jan'y of each successive year from said 1st day of January, 1880, until 1st day of July, 1884.

26.

Plaintiff also states that another of said seventy-six bonds held and owned by plaintiff, as hereinbefore set out, viz., bond No. 49, to which were attached ten coupon warrants thereon for thirty dollars each, and all of which coupons matured as follows:

One for $30, due 1 January, 1880;
One for $30, due 1 July, 1880;
One for $30, due 1 January, 1881;
One for $30, due 1 July, 1881;
One for $30, due 1 January, 1882;
One for $30, due 1 July, 1882;
One for $30, due 1 January, 1883;
One for $30, due 1 July, 1883;
One for $30, due 1 January, 1884;
And one for $30, due 1 July, 1884;

All of which described *eight* coupons for thirty dollars each remain wholly due and unpaid.

49 Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of the said causes of action aforesaid upon each of said *eight* coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons, on the 1 day of January, 1881, and on the 1st day of July and the 1st day of January of each successive year from said 1st day of January, 1881, until 1st day of July, 1884.

27.

Plaintiff also states that five of the seventy-six bonds held and owned by plaintiff, as hereinbefore set out, viz., bonds Nos. 51, 52, 53, 54, and 112, are attached to each of said bonds fourteen coupons of thirty dollars each, of which ten on each of said five bonds are now due and unpaid as follows: On bond No. 51 [are] the following coupons:

One for $30, due 1 January, 1880;
One for $30, due 1 July, 1880;
One for $30, due 1 January, 1881;
One for $30, due 1 July, 1881;
One for $30, due 1 January, 1882;
One for $30, due 1 July, 1882;
One for $30, due 1 January, 1883;
One for $30, due 1 July, 1883;
One for $30, due 1 January, 1884;
And one for $30, due 1 July, 1884;

50 All of which said last-described ten coupons for thirty dollars each remain wholly due and unpaid.

Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of the said causes of action aforesaid upon each of the ten coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons, on the 1st day of January, 1880, and on the 1st day of July an- the 1st day of January of each successive year from said 1st day of January, 1880, until 1st day of July, 1884.

51 Plaintiff also states that another of said five bonds last set forth held and owned by plaintiff, as hereinbefore set out, viz., bond No. 52, to which were attached ten coupon warrants thereon for thirty dollars each, and each of which matured as follows: One for $30, due January 1, 1880; one for $30, due July 1, 1880; one for $30, due Jan'y 1, 1881; one for $30, due July 1, 1881; one for $30, due Jan'y 1, 1882; one for $30, due July 1, 1882; one for $30, due Jan'y 1, 1883; one for $30, due July 1, 1883; one for $30, due Jan'y 1, 1884; and one for $30, due July 1, 1884.

All of which last-described ten coupons for thirty dollars each remain wholly due and unpaid. Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of the several causes of action aforesaid upon

each of said ten coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons, on the 1 day of January, 1880, and the 1 day of July and 1 day of January of each successive year from said 1 day of January, 1880, until 1st day of July, 1884.

28.

The plaintiff also states that [to] one of said five bonds last set out, held, and owned by him hereinbefore, set out and described, viz., bond No. 53, there were attached ten coupon warrants, which matured as follows:

One for $30, due 1 January, 1880;
One for $30, due 1 July, 1880;
One for $30, due 1 January, 1881;
One for $30, due 1 July, 1881;
One for $30, due 1 January, 1882;
One for $30, due 1 July, 1882;
One for $30, due 1 January, 1883;
One for $30, due 1 July, 1883;
One for $30, due 1 January, 1884;
And one for $30, due 1 July, 1884;

52 All of which last-described ten coupons for thirty dollars each remain wholly due and unpaid.

Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of the several causes of action aforesaid upon each of said ten coupons thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons, on the 1 day of January, 1880, and on the 1st day of July and 1st day of January of each successive year from said 1st day of January, 1880, until 1st day of July, 1884.

29.

Plaintiff also states that another of said five bonds last set out held and owned by him, viz., bond No. 54, to which were attached ten interest coupon warrants thereon for thirty dollars each, and each of which matured as follows:

One for $30, due 1 January, 1880;
One for $30, due 1 July, 1880;
One for $30, due 1 January, 1881;
One for $30, due 1 July, 1881;
One for $30, due 1 January, 1882;
One for $30, due 1 July, 1882;
One for $30, due 1 January, 1883;
One for $30, due 1 July, 1883;
One for $30, due 1 January, 1884;
And one for $30, due 1 July, 1884.

53 All of said last-named ten coupons for thirty dollars each remain wholly due and unpaid.

Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of the

several causes of action aforesaid upon each of said ten coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons, on the 1st day of January, 1880, and on the 1st day of July and 1st day of January of each successive year from said 1 day of Jan'y, 1880, until 1st day of July, 1884.

30.

Plaintiff also states that another of said five bonds last set out, viz., bond No. 112, to which were attached ten interest coupon warrants thereon for thirty dollars each, and each of which matured as follows:

One for $30, due January 1, 1880;
One for $30, due July 1, 1880;
One for $30, due January 1, 1881;
One for $20, due July 1, 1881;
One for $30, due January 1, 1882;
One for $30, due July 1, 1882;
One for $30, due Jan'y 1, 1883;
One for $30, due July 1, 1883;
One for $30, due January 1, 1884;
And one for $30, due July 1, 1884;

54 All which last-described ten coupons for thirty dollars each remain wholly due and unpaid. Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of the several causes of action aforesaid upon each of said ten coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons, on the 1 January, 1880, and on the 1 day of January and the 1 day of July of each and every successive year from said 1st day of January, 1880, until 1st July, 1884.

31.

Plaintiff also states that of said seventy-six bonds held and owned by him, as hereinbefore set out, to three of said bonds, viz., bonds Nos. 58, 59, & 61, there are attached to each of said bonds sixteen coupons for thirty dollars each, of which ten on each of said three bonds are now due and unpaid. On bond No. 58 the following coupons:

One for $30, due 1 January, 1880;
One for $30, due 1 July, 1880;
One for $30, due 1 January, 1881;
One for $30, due 1 July, 1881;
One for $30, due 1 January, 1882;
One for $30, due 1 July, 1882;
One for $30, due 1 January, 1883;
One for $30, due 1 July, 1883;
One for $30, due 1 January, 1884;
And one for $30, due 1 July, 1884;

55 All of which last-described ten coupons for thirty dollars each remain wholly due and unpaid.

Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of the several causes of action aforesaid upon each of said ten coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons, on the 1st day of January, 1880, and on the 1 day of July and 1 day of January of each successive year from said 1 day of January, until 1 day of July, 1884.

32.

Plaintiff also states that another of said three bonds last set forth held and owned by him, as hereinbefore set out, viz., bond No, 59, to which were attached ten coupon warrants thereon for thirty dollars each, which ten coupons matured as sollows:

One for $30 due 1 January, 1880;
One for $30 due 1 July, 1880;
One for $30 due 1 January, 1881;
One for $30 due 1 July, 1881;
One for $30 due 1 January, 1882;
One for $30 due 1 July, 1882;
One for $30 due 1 January, 1883;
One for $30 due 1 July, 1883;
One for $30 due 1 January, 1884;
And one for $30 due 1 July, 1884;

56 All of which said last-described ten coupons for thirty dollars each: remain wholly due and unpaid.

Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of the several causes of action aforesaid upon each of said coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons, on the 1 day of January, 1880, and on the 1 day of July and the 1 day of January of each successive year from said 1 day of January, 1880, until 1 day of July, 1884.

33.

Plaintiff also states that another of said three bonds last set out owned and held by plaintiff, as hereinbefore set out, viz., bond No. 61, to which were attached ten coupon warrants thereon for thirty dollars each, which coupons matured as follows:

One for $30 due 1 January, 1880;
One for $30 due 1 July, 1880;
One for $30 due 1 January, 1881;
One for $30 due 1 July, 1881;
One for $30 due 1 January, 1882;
One for $30 due 1 July, 1882;
One for $30 due 1 January, 1883;
One for $30 due 1 July, 1883;
One for $30 due 1 January, 1884;
And one for $30 due 1 July, 1884;

All of which last-described ten coupons for thirty dollars
57 each remain wholly due and unpaid.

Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of the several causes of action aforesaid upon each of said ten coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons, on the 1st day of January, 1880, and on the 1 day of July and on the 1 day of January of each successive year from said 1 January, 1880, until the 1 July, 1884.

34.

Plaintiff also states that of said seventy-six bonds held and owned by him, as hereinbefore set out, to three of said bonds, viz., bonds Nos. 56, 63, and 113, there are attached sixteen coupons to No. 56 and eighteen to 63 and 113 to each bond for thirty dollars each, of which ten on each of said three bonds are now due and unpaid. On bond No. 56 the following coupons:

One for $30, due 1 January, 1880;
One for $30, due 1 July, 1880;
One for $30, due 1 January, 1881;
One for $30, due 1 July, 1881;
One for $30, due 1 January, 1882;
One for $30, due 1 July, 1882.
One for $30, due I January, 1883;
One for $30, due 1 July, 1883;
One for $30, due 1 January, 1884;
And one for $30, due 1 July, 1884;

58 All of which last-described ten coupons for thirty dollars each remain wholly due and unpaid.

Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of the several causes of action aforesaid upon each of said ten coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons, on 1 January, 1880, and on the 1st day of July and 1st day of January of each successive year from said January, 1883, until 1 July, 1884.

35.

Plaintiff also states that another of said three bonds last set out held and owned by plaintiff, as hereinbefore set out, viz., bond No. 63, to which were attached — coupon warrants thereon for thirty dollars each, all of which coupons matured as follows:

One for $30, due January 1, 1880;
One for $30, due July 1, 1880;
One for $30, due January 1, 1881;
One for $30, due July 1, 1881;
One for $30, due January 1, 1882;
One for $30, due July 1, 1882;
One for $30, due January 1, 1883;
One for $30, due July 1, 1883;

One for $30, due January 1, 1884;
And one for $30, due July 1, 1884;

59 All of which last-described ten coupons for thirty dollars each remain wholly due and unpaid.

Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of the several causes of action aforesaid upon each of said ten coupons the sum of thirty dollars each, with interest thereon from the date of the respective maturities of each of said coupons, on the 1 January, 1883, and the 1 day of July and the 1 day of January of each successive year from said January 1, 1883, until 1 July, 1884.

36.

Plaintiff also states that another of said three bonds last set out held and owned by plaintiff, as hereinbefore set out, viz., bond No. 113, to which were attached ten coupon warrants thereon for thirty dollars each, all of which coupons matured as follows:

One for $30, due January 1, 1880;
One for $30, due July 1, 1880;
One for $30, due January 1, 1881;
One for $30, due July 1, 1881;
One for $30, due January 1, 1882;
One for $30, due July 1, 1882;
One for $30, due January 1, 1883;
One for $30, due July 1, 1883;
One for $30, due January 1, 1884;
And one for $30, due July 1, 1884;

60 All of which said last-described ten coupons for thirty dollars each remain wholly due and unpaid. Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of the several causes of action aforesaid upon each of said ten coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons, on the 1 day of January, 1883, and on the 1 day of July and January of each successive year from said January 1, 1883, until 1 July, 1884.

37.

Plaintiff also states that another of said seventy-six bonds held and owned by plaintiff, as hereinbefore set out, viz., bond No. 55, to which were attached eighteen (18) coupon warrants thereon for thirty dollars each, twelve of which coupons matured as follows:

One for $30, due January 1, 1879;
One for $30, due July 1, 1879;
One for $30, due January 1, 1880;
One for $30, due July 1, 1880;
One for $30, due January 1, 1881;
One for $30, due July 1, 1881;
One for $30, due January 1, 1882;
One for $30, due July 1, 1882;
One for $30, due January 1, 1883;

One for $30, due July 1, 1883;
One for $30, due January 1, 1884;
And one for $30, due July 1, 1884;

61 All of which last-described six coupons for thirty dollars each remain wholly due and unpaid.

Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of the several causes of action aforesaid upon each of said six coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons on, the 1 day of January, 1882, and the first day of July and 1 January of each successive year from said 1 day of January, 1882, until July 1, 1884.

38.

Plaintiff also states that another of said seventy-six bonds held and owned by plaintiff, as hereinbefore set out, viz., bond No. 65, to which were attached eighteen (18) coupon warrants of thirty dollars each, and ten of which coupons matured as follows, viz:

One for $30, due January 1, 1880;
One for $30, due July 1, 1880;
One for $30, due January 1, 1881;
One for $30, due July 1, 1881;
One for $30, due January 1, 1882;
One for $30, due July 1, 1882;
One for $30, due January 1, 1883;
One for $30, due July 1, 1883;
One for $30, due January 1, 1884;
And one for $30, due July 1, 1884;

62 All of which last-described ten coupons each remain wholly due and unpaid.

Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of the several causes of action aforesaid upon each of said ten coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons, on the 1 day of January, 1880, and on the one day of July and the 1 day of January of each successive year from said 1 day of January, 1880, until 1 day of July, 1884.

39.

Plaintiff states that another of said seventy-six bonds held and owned by plaintiff, as hereinbefore set out, viz., bond No. 56, to which were attached eighteen coupon warrants thereon for thirty dollars each, and ten of which matured as follows:

One for $30, due 1 January, 1880;
One for $30, due 1 July, 1880;
One for $30, due 1 January, 1881;
One for $30, due 1 July, 1881;
One for $30, due 1 January, 1882;
One for $30, due 1 July, 1882;
One for $30, due 1 January, 1883;

One for $30, due 1 July, 1883;
One for $30, due 1 January, 1884;
And one for $30, due 1 July, 1884.

All of which last-described ten coupons for thirty dollars
63 each remain wholly due and unpaid.

Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of the several causes of action aforesaid upon each of said ten coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons, on the 1 day of January, 1880, and the 1 January and 1 July of each successive year from said 1 January, 1880, until 1 day of July, 1884.

40.

Plaintiff also states that another of said seventy-six bonds held and owned by plaintiff, as hereinbefore set out, viz., bond No. 68, to which were attached eighteen coupon warrants thereon, for thirty dollars each, and ten of which coupons matured as follows:

One for $30, due 1 January, 1880;
One for $30, due 1 July, 1880;
One for $30, due 1 January, 1881;
One for $30, due 1 July, 1881;
One for $30, due 1 January, 1882;
One for $30, due 1 July, 1882;
One for $30, due 1 January, 1883;
One for $30, due 1 July, 1883;
One for $30, due 1 January, 1884;
And one for $30, due 1 July, 1884.

All of which said last-described coupons for thirty dollars each remain wholly due and unpaid.

64 Plaintiff states that by reason of the premises an action hath accrued to recover of the defendant upon each of the several causes of action aforesaid upon each of said ten coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons, on the 1 day of January, 1880, and on the 1 July and 1 January of each successive year from said 1 January, 1880, until 1 July, 1884.

41.

The plaintiff also states that another of said seventy-six bonds held and owned by plaintiff, as hereinbefore set out, viz., bond No. 72, to which were attached twenty coupons thereon of thirty dollars each, and ten of which coupons matured as follows:

One for $30, due 1 January, 1880;
One for $30, due 1 July, 1880;
One for $30, due 1 January, 1881;
One for $30, due 1 July, 1881;
One for $30, due 1 January, 1882;
One for $30, due 1 July, 1882;
One for $30, due 1 January, 1883;

One for $30, due 1 July, 1883;
One for $30, due 1 January, 1884;
And one for $30, due 1 July, 1884;
All of which last-described ten coupons for thirty dollars each remain wholly due and unpaid.

Plaintiff states that by reason of the premises an action hath
65 accrued to him to recover of the defendant upon each of the several causes of action aforesaid upon each of said ten coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons, on the 1 January, 1880, and on 1 July and 1 January of each successive year from said one day of January, 1881, until 1 day of July, 1884.

42.

Plaintiff also states that another of said seventy-six bonds owned and held by him, as hereinbefore set out, viz., bond No. 75, to which were attached twenty coupons thereon for thirty dollars each, ten of which coupons matured as follows, to wit:
One for $30, due 1 January, 1880;
One for $30, due 1 July, 1880;
One for $30, due 1 January, 1881;
One for $30, due 1 July, 1881;
One for $30, due 1 January, 1882;
One for $30, due 1 July, 1882;
One for $30, due 1 January, 1883;
One for $30, due 1 July, 1883;
One for $30, due 1 January, 1884;
And one for $30, due 1 July, 1884;
All of which said last-described ten coupons for thirty dollars each remain wholly due and unpaid.

Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of the
66 several causes of action aforesaid upon each of said ten coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons, on the 1 day of January, 1880, and on the 1 day of July and 1 day of January of each successive year from said 1 day of January, 1880, until 1 day of July, 1884.

43.

Plaintiff also states that another of said seventy-six bonds held and owned by plaintiff, as hereinbefore set out, viz., bond No. 73, to which were attached twenty coupons of thirty dollars each, ten of which coupons matured as follows, to wit:
One for $30, due 1 January, 1880;
One for $30, due 1 July, 1880;
One for $30, due 1 January, 1881;
One for $30, due 1 July, 1881;
One for $30, due 1 January, 1882;
One for $30, due 1 July, 1882;
One for $30, due 1 January, 1883;

One for $30, due 1 July, 1883;
One for $30, due 1 January, 1884;
And one for $30, due 1 July, 1884.

All of which last-described ten coupons for thirty dollars each remain wholly due and unpaid.

Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of the
67 several causes of action aforesaid upon each of said ten coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons from 1 January, 1880, and on 1 day of July and 1 day of January of each successive year from said 1 January, 1880, until 1 July, 1884.

43*.

Plaintiff also states that another of said seventy-six bonds held and owned by plaintiff, as hereinbefore set out, viz., bond No. 79, to which were attached twenty-two coupons of thirty dollars each, ten of which coupons matured as follows:

One for $30, due 1 January, 1880;
One for $30, due 1 July, 1880;
One for $30, due 1 January, 1881;
One for $30, due 1 July, 1881;
One for $30, due 1 January, 1882;
One for $30, due 1 July, 1882;
One for $30, due 1 January, 1883;
One for $30, due 1 July, 1883;
One for $30, due 1 January, 1884;
And one for $30, due 1 July, 1884.

All of which last-described ten coupons for thirty dollars each remain wholly due and unpaid. Plaintiff states that by reason of the premises an action hath accrued to him to recover of the
68 defendant upon each of the several causes of action aforesaid upon each of said ten coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons, on the 1 day of January, 1880, and on the 1 day of July and the 1 day of January of each successive year from said 1 day of January, 1880, until 1 day of July, 1884.

44.

Plaintiff also states that another of said seventy-six bonds owned and held by him, as hereinbefore set out, viz., bond No. 80, to which were attached twenty-two coupons, ten of which coupons matured as follows, to wit:

One for $30, due 1 January, 1880;
One for $30, due 1 July, 1880;
One for $30, due 1 January, 1881;
One for $30, due 1 July, 1881.
One for $30, due 1 January, 1882;
One for $30, due 1 July, 1882;
One for $30, due 1 January, 1883;

One for $30, due 1 July, 1883;
One for $30, due 1 January, 1884;
And one for $30, due 1 July, 1884;
All of which coupons for thirty dollars each last described remain wholly due and unpaid.

Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each
69 of said several causes of action aforesaid upon each of said ten coupons the sum of thirty dollars, with interest thereon from the dates of the respective maturities of each of said coupons, on the 1 day of January, 1880, and on the 1 day of July and 1 day of January of each successive year from said 1 day of January, 1880, until 1 July, 1884.

45.

Plaintiff also states that another of said seventy-six bonds held and owned by him, as hereinbefore set out, viz., bond No. 81, to which were attached twenty-two coupons of thirty dollars each, ten of which matured as follows:
One for $30, due January 1, 1880;
One for $30, due July 1, 1880;
One for $30, due January 1, 1881;
One for $30, due July 1, 1881;
One for $30, due January 1, 1882;
One for $30, due July 1, 1882;
One for $30, due January 1, 1883;
One for $30, due July 1, 1883;
One for $30, due January 1, 1884;
And one for $30, due July 1, 1884;
All of which said ten coupons for thirty dollars each remain wholly due and unpaid.

Plaintiff further states that by reason of the premises an action hath accrued to him to recover of the defendant upon each
70 of the several causes of action upon each of said ten coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons—1 January, 1880, and on 1 January and 1 July of each successive year from said 1 January, 1880, until 1 July, 1884.

45.

Plaintiff also states that another of said seventy-six bonds held and owned by plaintiff, as hereinbefore set out, viz., bond No. 82, — there were attached twenty-two coupons of thirty dollars each, of which ten coupons matured as follows:
One for $30, due 1 January, 1880;
One for $30, due 1 July, 1880;
One for $30, due 1 January, 1881;
One for $30, due 1 July, 1881;
One for $30, due 1 January, 1882;
One for $30, due 1 July, 1882;
One for $30, due 1 January, 1883;

One for $30, due 1 July, 1883;
One for $30, due 1 January, 1884;
And one for $30, due 1 July, 1884;
All of which last-described ten coupons for thirty dollars each remain wholly due and unpaid. Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of the several causes of action aforesaid upon each of said ten coupons the sum of thirty dollars, with interest
71 thereon from the date of the respective maturities of each of said coupons, on the 1 day of January, 1880, and on the 1 day of July of each successive year from said 1 day of January, 1880, until 1 July, 1884.

46.

Plaintiff also states that another of said seventy-six bons heldd and owned by plaintiff, as hereinbefore set out, viz., bond No. 77, to which were attached twenty-two coupons of thirty dollars each, ten of which coupons matured as follows:
One for $30, due 1 January, 1880;
One for $30, due 1 July, 1880;
One for $30, due 1 January, 1881;
One for $30, due 1 July, 1881;
One for $30, due 1 January, 1882;
One for $30, due 1 July, 1882;
One for $30, due 1 January, 1883;
One for $30, due 1 July, 1883;
One for $30, due 1 January, 1884;
And one for $30, due 1 July, 1884;
All of which said ten last-described coupons for thirty dollars each remain wholly due and unpaid. Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of the several causes of action aforesaid upon each of said ten coupons the sum of thirty dollars, with interest
72 thereon from the date of the respective maturities of each of said coupons, on 1 day of January, 1880, and on the 1 day of July and the 1 day of January of each successive year from said 1 day of January, 1880, until 1 July, 1884.

47.

Plaintiff also states that another of said seventy-six bonds held and owned by plaintiff, as hereinbefore set out, viz., bond No. 84, to which were attached twenty-six coupons for thirty dollars each, ten of which coupons matured as follows:
One for $30, due 1 January, 1880;
One for $30, due 1 July, 1880;
One for $30, due 1 January, 1881;
One for $30, due 1 July, 1881;
One for $30, due 1 January, 1882;
One for $30, due 1 July, 1882;
One for $30, due 1 January, 1883;
One for $30, due 1 July, 1883;

One for $30, due 1 January, 1884;
And one for $30, due 1 July, 1884;
All of which said ten coupons last described for thirty dollars each remain wholly due and unpaid.

Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of the several causes of action aforesaid upon each of said ten coupons the sum of thirty dollars, with interest thereon from the date of the re-
73 spective maturities of each of said coupons on 1 January, 1880, and on the 1 day of July and the 1 day of January of each successive year from 1 day of January, 1880, until 1 day of July, 1884.

48.

Plaintiff also states that another of said seventy-six bonds held and owned by plaintiff, as hereinbefore set out, viz., bond 86, to which were attached twenty-four coupons of thirty dollars each, ten of which matured as follows:
One for $30, due 1 January, 1880;
One for $30, due 1 July, 1880;
One for $30, due 1 January, 1881;
One for $30, due 1 July, 1881;
One for $30, due 1 January, 1882;
One for $30, due 1 July, 1882;
One for $30, due 1 January, 1883;
One for $30, due 1 July, 1883;
One for $30, due 1 January, 1884;
And one for $30, due 1 July, 1884;
All of which last-described ten coupons for thirty dollars each remain wholly due and unpaid.

Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of the several causes of action aforesaid upon each of said ten coupons the sum of thirty dollars, with interest thereon from the date of the re-
74 spective maturities of each of said coupons on the 1 day of January, 1880, and the 1 July and 1 January of each successive year from said 1 January, 1880, until 1 day of July, 1884.

49.

Plaintiff also states that another of said seventy-six bonds held and owned by plaintiff, as hereinbefore set out, viz., bond No. 87, to which were attached twenty-four coupons of thirty dollars each, of which ten coupons matured as follows:
One for $30, due 1 January, 1880;
One for $30, due 1 July, 1880;
One for $30, due 1 January, 1881;
One for $30, due 1 July, 1881;
One for $30, due 1 January, 1882;
One for $30, due 1 July, 1882;
One for $30, due 1 January, 1883;
One for $30, due 1 July, 1883;

One for $30, due 1 January, 1884;
And one for $30, due 1 July, 1884;
All of which last-described ten coupons for thirty dollars each remain wholly due and unpaid.

Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of the several causes of action aforesaid upon each of the said ten coupons the sum of thirty dollars, with interest thereon from the date of
75 the respective maturities of each of said coupons, on the 1 day of January, 1880, and on 1 July and 1 January of each successive year from the said 1 January, 1880, until 1 July, 1884.

50.

Plaintiff also states that another of said seventy-six bonds held and owned by plaintiff, as hereinbefore set out, viz., bond No. 89, to which were attached twenty-four coupons of thirty dollars each, ten of which coupons matured as follows:
One for $30, due 1 January, 1880;
One for $30, due 1 July, 1880;
One for $30, due 1 January, 1881;
One for $30, due 1 July, 1881;
One for $30, due 1 January, 1882;
One for $30, due 1 July, 1882;
One for $30, due 1 January, 1883;
One for $30, due 1 July, 1883;
One for $30, due 1 January, 1884;
And one for $30, due 1 July, 1884;
All of which last-described ten coupons for thirty dollars each remain wholly due and unpaid.

Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of the several causes of action aforesaid upon each of said ten coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons, on 1 January, 1880,
76 and on the 1 July and 1 January of each successive year from said 1 January, 1880, until 1 day of July, 1884.

51.

Plaintiff also states that another of said seventy-six bonds held and owned by plaintiff, as hereinbefore set out, viz., bond No. 90, to which twenty-six coupons of thirty dollars each were attached, and of which coupons twelve matured as follows:
One for $30, due 1 January, 1879;
One for $30, due 1 July, 1879;
One for $30, due 1 January, 1880;
One for $30, due 1 July, 1880;
One for $30, due 1 January, 1881;
One for $30, due 1 July, 1881;
One for $30, due 1 January, 1882;
One for $30, due 1 July, 1882;

One for $30, due 1 January, 1883;
One for $30, due 1 July, 1883;
One for $30, due 1 January, 1884;
And one for $30, due 1 July, 1884;
All of which said last-described twelve (12) coupons for thirty dollars each remain wholly due and unpaid.

Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of the several causes of action aforesaid upon each of said twelve coupons thirty dollars, with interest thereon from the date of the respective
77 maturities of each of said coupons, on the 1 day of January, 1879, and the 1 July and 1 January of each successive year from the said 1 January, 1879, until 1 July, 1884.

52.

Plaintiff also states that another of said seventy-six bonds held and owned by plaintiff, as hereinbefore set out, viz., bond No. 91, to which were attached twenty-four coupons of thirty dollars each, of which ten coupons matured as follows:
One for $30, due 1 January, 1880;
One for $30, due 1 July, 1880;
One for $30, due 1 January, 1881;
One for $30, due 1 July, 1881;
One for $30, due 1 January, 1882;
One for $30, due 1 July, 1882;
One for $30, due 1 January, 1883;
One for $30, due 1 July, 1883;
One for $30, due 1 January, 1884;
And one for $30, due 1 July, 1884;
All of which said last-described ten coupons for thirty dollars each remain wholly due and unpaid.

Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of said ten coupons the sum of thirty dollars, with interest thereon from the date of the maturity of each of said coupons, on the 1 day of January, 1880, and on 1 July and 1 January of each successive
78 year from said 1 January, 1880, until 1 July, 1884.

53.

Plaintiff also states that another of said seventy-six bonds owned and held by him, as hereinbefore set out, viz., bond No. 93, to which were attached twenty-six coupons of thirty dollars each, ten of which coupons matured as follows:
One for $30, due 1 January, 1880;
One for $30, due 1 July, 1880;
One for $30, due 1 January, 1881;
One for $30, due 1 July, 1881;
One for $30, due 1 January, 1882;
One for $30, due 1 July, 1882;
One for $30, due 1 January, 1883;

One for $30, due 1 July, 1883;
One for $30, due 1 January, 1884;
And one for $30, due 1 July, 1884;
All of which last-described coupons, ten in number, for thirty dollars each, remain wholly due and unpaid.

Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of the several causes of action aforesaid upon each of said ten coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons, on 1 January, 1880, and on 1 July and 1 January of each successive year from said 1st day of January, 1881, until 1 day of July, 1884.

54.

79 Plaintiff also states that another of said seventy-six bonds owned and held by him, as hereinbefore set out, viz., bond No. 94, to which were attached twenty-six coupons of thirty dollars each, ten of which matured as follows:

One for $30, due 1 January, 1880;
One for $30, due 1 July, 1880;
One for $30, due 1 January, 1881;
One for $30, due 1 July, 1881;
One for $50, due 1 January, 1882;
One for $30, due 1 July, 1882;
One for $30, due 1 January, 1883;
One for $30, due 1 July, 1883;
One for $30, due 1 January, 1884;
And one for $30, due 1 July, 1884;
All of which said ten last-described coupons for thirty dollars each are wholly due and unpaid.

Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of the several causes of action aforesaid upon each of said ten aforesaid coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons, on 1 January, 1880, and 1 July and 1 January of each successive year from said 1 January, 1880, until 1 July, 1884.

55.

80 Plaintiff also states that another of said seventy-six bonds owned and held by him, as hereinbefore set out, viz., bond No. 95, to which were attached twenty-six coupons for thirty dollars each, ten of which matured as follows:

One for $30, due 1 January, 1880;
One for $30, due 1 July, 1881;
One for $30, due 1 January, 1881;
One for $30, due 1 July, 1881;
One for $30, due 1 January, 1882;
One for $30, due 1 July, 1882;
One for $30, due 1 January, 1883;

One for $30, due 1 July, 1883;
One for $30, due 1 January, 1884;
And one for $30, due 1 July, 1884;
All of which said ten last-described coupons for thirty dollars each remain wholly due and unpaid.

Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of the several causes of action aforesaid upon each of said ten coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons, on 1 January, 1880, and on the 1 July and 1 January of each successive year from said 1 January, 1880, until 1 July, 1884.

56.

Plaintiff states that another of said seventy-six bonds held and owned by him, as hereinbefore set out, viz., bond No. 96, to
81 which were attached twenty-six coupons of thirty dollars each, ten of which matured as follows:

One for $30, due 1 January, 1880;
One for $30, due 1 July, 1880;
One for $30, due 1 January, 1881;
One for $30, due 1 July, 1881;
One for $30, due 1 January, 1882;
One for $30, due 1 July, 1882;
One for $30, due 1 January, 1883;
One for $30, due 1 July, 1883;
One for $30, due 1 January, 1884;
And one for $30, due 1 July, 1884;
All of which last-described ten coupons for thirty dollars each remain wholly due and unpaid.

Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of the several causes of action aforesaid upon each of said ten coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons, on the 1 January, 1880, and on the 1 July and 1 January of each successive year from said 1 January, 1880, until 1 July, 1884.

57.

Plaintiff also states that another of said seventy-six bonds owned and held by him, as hereinbefore set out, viz, bond No. 98, to which were attached twenty-eight coupons of thirty dollars each,
82 ten of which matured as follows:

One for $30, due 1 January, 1880;
One for $30, due 1 July, 1880;
One for $30, due 1 January, 1881;
One for $30, due 1 July, 1881;
One for $30, due 1 January, 1882;
One for $30, due 1 July, 1882;
One for $30, due 1 January, 1883;
One for $30, due 1 July, 1883;

One for $30, due 1 January, 1884;
And one for $30 due 1 July, 1884;
All of which said last-described ten coupons for thirty dollars each are wholly due and unpaid.

Plaintiff states that by reason of the premises and action hath accrued to him to recover of the defendant upon each of the several causes of action aforesaid upon each of said ten coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons, on the 1 January, 1880, and on 1 July and 1 January of each successive year from said 1 January, 1880, until 1 July, 1884.

58.

Plaintiff also states that another of said seventy-six bonds owned and held by him, as hereinbefore set out, viz., bond No. 100, to which were attached twenty-eight coupons of thirty dollars each, ten of which matured as follows:

83 One for $30, due 1 January, 1880;
One for $30, due 1 July, 1880;
One for $30, due 1 January, 1881;
One for $30, due 1 July, 1881;
One for $30, due 1 January, 1882;
One for $30, due 1 July, 1882;
One for $30, due 1 January 1883;
One for $30, due 1 July, 1883;
One for $30, due 1 January, 1884;
And one for $30, due 1 July, 1884;
All of which last-described ten coupons for thirty dollars each remain wholly due and unpaid.

Plaintiff states that by reason of the premises an action hath accrued to him to recover of the defendant upon each of the said ten coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons on the 1 day of January, 1880, and on the 1 day of July and the 1 day of January of each successive year from said 1 January, 1880, until 1 July, 1884.

59.

Plaintiff also states that another of said seventy-six bonds owned and held by him, as hereinbefore set out, viz., bond No. 102, to which were attached twenty-eight coupons of thirty dollars each, ten of which coupons matured as follows, to wit:

One for $30, due January 1, 1880;
One for $30, due July 1, 1880;
84 One for $30, due January 1, 1881;
One for $30, due July 1, 1881;
One for $30, due January 1, 1882;
One for $30, due July 1, 1882;
One for $30, due January 1, 1883;
One for $30, due 1, 1883;
One for $30, due January 1, 1884;
And one for $30, due July 1, 1884;

All of which last-described coupons, ten in number, of thirty dollars each remain wholly due and unpaid.

Plaintiff states that by reason of the premises an action hath accrued to him to recover of defendant upon the several causes of action aforesaid upon each of said ten coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons, on the 1 day of January, 1880, and on 1 day of July and 1 January of each successive year from said 1 day of January, 1880, until 1 day of July, 1884.

60.

Plaintiff also states that he is the holder and owner of one hundred and twenty coupons of thirty dollars each that have been detached and cut off from the one hundred and nineteen bonds hereinbefore set out; all of which one hundred and twenty coupons are wholly due and unpaid, and which matured as follows, to wit:

One coupon for $30, due January 1, 1879;
85 One coupon for $30, due July 1, 1879;
Fourteen coupons for $30 each, due January 1, 1880;
Seventeen coupons for $30 each, due July 1, 1880;
Fifteen coupons for $30 each, due January 1, 1881;
Fifteen coupons for $30 each, due July 1, 1881;
Eleven coupons for $30 each, due January 1, 1882;
Eleven coupons for $30 each, due July 1, 1882;
Eleven coupons for $30 each, due January 1, 1883;
Twelve coupons for $30 each, due July 1, 1883;
Six coupons for $30 each, due Jan'y 1, 1884;
Six coupons for $30 each, due July 1, 1884;

All of which said one hundred and twenty last-described coupons of thirty dollars each are wholly due and unpaid.

Plaintiff states that by reason of the franchises an action hath accrued to him to recover of the defendant upon each of the several causes of action aforesaid upon each of said one hundred and twenty coupons the sum of thirty dollars, with interest thereon from the date of the respective maturities of each of said coupons on 1st day of January, 1879, and on the 1 day of July and 1st day of January of each succeeding — from said 1 day of January, 1879, until 1st day of July, 1884.

Plaintiff further states that the defendant had no money at the La Fayette Bank, Cincinnati, to meet any of the twenty-five bonds purchased and held by plaintiff at the time of the respective maturies of each of said bonds, viz., from January 1st, 1879, and
86 on the 1st day of January of each and every succeeding year from said 1st January, 1879, to the 1st of January, 1884; and plaintiff further states that the defendant had no money at the La Fayette Bank, in Cincinnati, Ohio, to meet any of the five hundred and forty coupons attached to each of the seventy-six bonds purchased and held by plaintiff, or to pay said one hundred and twenty coupons owned and held by plaintiff detached from the one hundred and nineteen bonds at the time of the respective maturi-

ties of each of said coupons attached and detached to said bonds, viz: From the 1 day of January, 1879, and on the 1 day of July and 1 day of January of each and every succeeding year from said 1 day of January, 1879, until 1 day of July, 1884; and that said twenty-five bonds and all of said coupons attached to each of defendant's seventy-six bonds purchased and owned by plaintiff — coupons, together with the interest upon each of said twenty-five bonds and coupons from the respective maturity thereof, remain wholly due and unpaid.

Plaintiff files a copy of one of said bonds bought and now held by him—No. forty—with coupons attached, as part hereof; the other seventy-five bonds and coupons attached, owned and held by
87 plaintiff as aforesaid, being of like tenor and effect; copies will not be filed unless required.

Plaintiff states that said seventy-six bonds sued on and the coupons attached to each of said bonds and the 120 coupons detached are negotiable instruments, and pass by delivery, and to file these originals would incur risk of great loss.

Said originals are in possession of plaintiff and kept for safety in the Safe Deposit Company's vault in Cin, Ohio, and will be produced, if required by the court at the hearing.

Wherefore, upon the said several causes of action hereinbefore set out, plaintiff prays judgment for twenty-five thousand dollars, being the total amount of the twenty-five past-due bonds for one thousand dollars each, with interest from the date of maturity of each and every one of said bonds when they respectively became due and payable, according to the true intent and tenor of the same.

And also prays for judgment for the further sum of nineteen thousand eight hundred dollars, being the total amount of 660 coupons for thirty dollars each, with interest from the date of maturity of each and every one of said coupons when they respectively became due and payable, according to the true intent and tenor of the same.

Wherefore plaintiff prays judgment upon the several causes
88 of action for the sum of forty-four thousand eight hundred dollars ($44,800), with interest, as above set out, and his costs.

STATE OF OHIO, *County of Hamilton, City of Cincinnati:*

Personally appeared before me, a notary public of the State of Ohio, in the county of Hamilton and city of Cincinnati, David Sinton, who states he is a citizen of the State of Ohio, and that he is plaintiff in the foregoing petition, and that the statements therein contained are true, as he verily believes. Said seventy-six bonds were purchased for value, with coupons attached, from 1 January, 1879, to 1 July, 1884, and no part of principal or interest has been paid.

DAVID SINTON.

Sworn to before me and subscribed in my presence this first day of November, 1884.

[SEAL.]

E. J. HOWARD,
Notary Public, Hamilton County, Ohio.

E. B. WILHOIT,
J. W. STEVENSON,
Attorneys for Plaintiff.

89 The following is a copy of the bond referred to by and exhibited with the foregoing petition, viz:

Bond A.

UNITED STATES OF AMERICA, *State of Kentucky, County of Carter.*

$1,000. No. 40.

The County of Carter, and those parts of Boyd and Elliott counties taken from Carter, will pay, six years after date hereof, to Henry Peachey and Richard A. Butler, executors of Joseph C. Butler, deceased, or bearer, at La Fayette Bank, Cincinnati, Ohio, one thousand dollars, with six per cent. per annum interest thereon from date, interest payable semi-annually, for which interest warrants are hereto attached, signed by the clerk of the Carter county court.

This bond is executed by order of the Carter county court at its June term, 1878, under authority of an act of the General Assembly of Kentucky, approved 30th January, 1878, for the purpose in said act specified.

Witness the signatures of A. Rucker, presiding judge, and E. P. Davis, clerk of said Carter county court, with the seal thereof annexed, this 1st day of July, 1878.

A. RUCKER,
Presiding Judge Carter County Court.

[SEAL.]

E. P. DAVIS,
Clerk Carter County Court.

90 To the foregoing bond were attached the following interest warrants, viz:

Interest Warrant.

$30. No. 12.

Carter county and those parts of Boyd and Elliott counties taken from Carter will pay to bearer, at La Fayette Bank, Cincinnati, Ohio, thirty dollars on 1st July, 1884.

$1,000. Bond A. No. 40.

E. P. DAVIS,
Clerk Carter Co. Ct.

Interest Warrant.

$30. No. 11.

Carter county and those parts of Boyd and Elliott counties taken from Carter will pay to bearer, at La Fayette Bank, Cincinnati, Ohio, thirty dollars on 1st January, 1884.
$1,000. Bond A. No. 40.

E. P. DAVIS,
Clerk Carter Co. C't.

Interest Warrant.

$30. No. 10.

Carter county and those parts of Boyd and Elliott counties taken from Carter will pay to bearer, at La Fayette Bank, Cincinnati, Ohio, thirty dollars on 1st July, 1883.
$1,000. Bond A. No. 40.

E. P. DAVIS,
Clerk Carter Co. C't.

91 *Interest Warrant.*

$30. No. 9.

Carter county and those parts of Boyd and Elliott counties taken from Carter will pay to bearer at La Fayette Bank, Cincinnati, Ohio, thirty dollars on 1st January, 1883.
$1,000. Bond A. No. 40.

E. P. DAVIS,
Clerk Carter Co. C't.

Interest Warrant.

$30. No. 8.

Carter county and those parts of Boyd and Elliott counties taken from Carter will pay to bearer at La Fayette Bank, Cincinnati, Ohio, thirty dollars on 1st July, 1882.
$1,000. Bond A. No. 40.

E. P. DAVIS,
Clerk Carter Co. C't.

Interest Warrant.

$30. No. 7.

Carter county and those parts of Boyd and Elliott counties taken from Carter will pay to bearer at La Fayette Bank, Cincinnati, Ohio, thirty dollars on 1st January, 1882.
$1,000. Bond A. No. 40.

E. P. DAVIS,
Clerk Carter Co. C't.

92 *Interest Warrant.*

$30. No. 6.

Carter county and those parts of Boyd and Elliott counties taken from Carter will pay to bearer at La Fayette Bank, Cincinnati, Ohio, thirty dollars on 1st July, 1881.

$1,000. Bond A. No. 40.

E. P. DAVIS,
Clerk Carter Co. C't.

Interest Warrant.

$30. No. 5.

Carter county and those parts of Boyd and Elliott counties taken from Carter will pay to bearer at La Fayette Bank, Cincinnati, Ohio, thirty dollars on 1st January, 1881.

$1,000. Bond A. No. 40.

E. P. DAVIS,
Clerk Carter Co. C't.

Interest Warrant.

$30. No. 4.

Carter county and those parts of Boyd and Elliott counties taken from Carter will pay to bearer at La Fayette Bank, Cincinnati, Ohio, thirty dollars on 1st July, 1880.

$1,000. Bond A. No. 40.

E. P. DAVIS,
Clerk Carter Co. C't.

93 *Interest Warrant.*

$30. No. 3.

Carter county and those parts of Boyd and Elliott counties taken from Carter will pay to bearer at La Fayette Bank, Cincinnati, Ohio, thirty dollars on 1st January, 1880.

$1,000. Bond A. No. 40.

E. P. DAVIS,
Clerk Carter Co. C't.

Upon the foregoing petition the following summons issued herein, viz:

The President of the United States of America to the marshal of the Kentucky district, Greeting:

You are commanded to summon the County of Carter, in the State of Kentucky, to answer on the 1st day of the next December term of the circuit court of the United States for the district of Kentucky, to be held at the city of Covington, a petition filed against it in said court by David Sinton, a citizen of Cincinnati, Ohio, and warn it that upon its failure to answer the petition will be taken for confessed or it will be proceeded against for contempt, and you will make due return of this summons on the first day of the next December term of said court.

Witness Morrison R. Waite, Esq., Chief Justice of the Supreme Court of the United States, at Covington, in said district, this
94 1st day of November, in the year of our Lord 1884, and of our Independence the 109th year.

JOS. C. FINNELL,
C. C. C., K. D.,
[SEAL.] By JOHN O'NEAL, *D. C.*

Which summons was returned and filed on the 7th day of November, 1884, endorsed as follows, viz:

"Executed Nov. 3rd, 1884, near Grayson, Carter county, Ky., by delivering a true copy of the within summons to Joseph H. Strother, judge of the Carter county court. A. J. Auxier, U. S. marshal, by S. H. Parker, dept. marshal."

And on Tuesday, December 2nd, A. D. 1884, the following order [was] entered herein, viz:

DAVID SINTON *vs.* CARTER COUNTY.

This cause coming on to be heard on motion of defendant to transfer this case to the U. S. circuit court at Frankfort for trial, the court now being fully advised, said motion is overruled and defendants *are* given until Tuesday, Dec. 9th, 1884, to plead.

And on a day following, to wit, on the 9th day of December, A. D. 1884, came defendant, by counsel, Hon. A. Duvall, and
95 filed the following special and general demurrers herein, to wit:

General Demurrer.

Circuit Court of the United States for the District of Kentucky.

DAVID SINTON *vs.* CARTER COUNTY.

The defendant demurs to the petition and each and every paragraph thereof on the ground that said petition does not, nor does either paragraph thereof, state facts sufficient to constitute a cause of action.

A. DUVALL,
For Defendant.

And defendant demurs specially herein on the grounds, 1st, that the petition shows that there is a defect of parties plaintiff and defendant; wherefore, &c.

A. DUVALL,
For Defendant.

And on December 10th, A. D. 1884, the following order [was] entered herein, viz:

DAVID SINTON *vs.* CARTER COUNTY.

This cause coming on to be heard on defendant's demurrer
96 to plaintiff's petition herein, came plaintiff, by counsel, Hon. John W. Stevenson, and defendant, by counsel, Hon. A. Duvall, and made oral argument before the court.

The court, not being fully advised, takes time, and counsel have leave to file briefs. Cause submitted.

And on January 24th, A. D. 1885, the following order [was] entered herein, viz:

DAVID SINTON *vs.* CARTER COUNTY.

This cause being heard on the demurrers of defendant to the bill of complainant herein, the court, now being advised of and concerning the law arising upon said demurrer, files its written opinion, and it is now ordered and adjudged that said demurrers be and the same are overruled; and it is further ordered that defendant have twenty days from the entry of this order in which to file a good and sufficient answer; to which ruling of the court defendant excepts.

The written opinion of the court mentioned in the foregoing order is as follows, to wit:

DAVID SINTON *vs.* CARTER COUNTY.

97 The defendant demurs to the petition, because, as is argued—

1. The act under which the bonds sued on is unconstitutional and void.

2. The act, if constitutional, does not authorize the issuing of these bonds.

3. There is a defect of parties defendant.

It is insisted that the title of the act under which these bonds were issued does not express its subject, but is misleading and delusive. The title of the act of 1877, 1 vol., sess. acts 1878, page 77, is "An act authorizing the county of Carter and those parts of the counties of Boyd and Elliott taken from Carter county to compromise and settle with the holders of the bonds and coupons of interest executed by Carter county in its subscription to the capital stock of the Lexington and Big Sandy Railroad Company, and to levy and collect a tax for that purpose."

An examination of the act will show that the subject-matter is distinctly expressed by this title. But it is claimed that the Legislature had no constitutional authority to authorize the county court of Carter to compromise an old debt and issue bonds for parts of Boyd and Elliott counties and to levy and collect taxes upon parts of those counties to pay the proportion of those bonds thus issued.

98 If this be true as contended the act would not be unconstitutional by reason of its title. The constitutional provision is that "no law enacted by the General Assembly shall relate to more than one subject, and that shall be expressed in the title." Here there is only one subject and that is clearly expressed in the title. We have seen no case which sustains the construction of the learned counsel, and we think none can be found. Cooley's Constitutional Limitations, 144, '5, '6, '7, '8, and authorities referred to in notes.

The next inquiry is whether the Legislature had the constitu-

tional right to empower the county court of Carter to act and bind those parts of Boyd and Elliott counties which had been a part of Carter county.

Carter county, under the authority of the Legislature and prior to the formation of Boyd and Elliott counties, subscribed $75,000 to the stock of the Lexington and Big Sandy Railroad Company and paid for it by the issual of its coupon bonds payable to bearer. In 1859, and with these bonds outstanding, the county of Boyd was created. Sess. acts 1859–'60, p. 34. In this act the Legislature provided "that nothing in this act shall be construed to release the citizens and property now subject or which may hereafter
99 become subject to taxation within the boundary of Carter county, included in the 1st section of this act, from being held and made liable for the bonds and interest issued to the Lexington and Big Sandy Company, as though this act had never been passed."

The county of Elliott was created by an act of the Legislature passed in 1869, and exactly the same language is used in regard to this subject as that used in the act of 1859 creating Boyd county. Sess. acts 1869–'70, p. 72, sec. 7. In addition to this express authority was given the officers of Carter county to continue to levy and collect taxes in that part of Elliott which was taken off of Carter county. This part of the act was, however, subsequently repealed.

The effect of these provisions in the acts creating the counties of Boyd and Elliott *counties* was, I think, to retain those parts of Carter county within that municipality so far as their then outstanding bonds were concerned.

No other construction of these provisions would give full effect to the words "as though this act had never been passed."

If the acts creating Boyd and Elliott counties had never been passed there could not have been a doubt of the right of the Legislature to authorize the county court of Carter to compromise
100 and adjust the outstanding debt and issue new bonds bind[ing] the county for the amounts agreed upon in the compromise.

This would not have been because the people of the county had elected the county court as their fiscal agent, but because the legislative department of the State authorized a subsisting municipality to compromsse and adjust its outstanding bonds, and authorized the county court as the agent of this municipality to act for the corporation. It might in the legislative discretion have indicated any other agent.

If I am correct in the conclusion that for the purposes of this outstanding debt of Carter county the territorial limits were the same as before the establishment of Boyd and Elliott counties, then the agency which should act for the county was within legislative discretion. The question is not whether the Legislature had the constitutional power to authorize a county court of one county to subscribe stock in a railroad company and issue bonds in payment thereof for another county without the consent of the people of that county, but whether, when the debt has already been created by the county itself under authority of law, the Legislature may not in its discre-

101 tion indicate the agency to represent the debtor municipality in compromising and adjusting the debt and issuing new bonds in settlement without the consent of the people of that municipality.

It is true that the act of 1878 authorized settlement of the old debt and the creation of a new one for the amount of the compromise.

But this fact did not make the act unconstitutional, for the reason indicated. Allison *vs.* Louis, Harrod's Creek and Westport R. R. Co., 10 Bush., 1–1, rather sustains than conflicts with the conclusion indicated. In that case the court sustained a subscription to the R. R. Co. and the issuing of bonds of one precinct of a county by the county court of the county. This precinct was only a small portion of the county, and the county court was in no proper sense the representative of the precinct.

It was in reality an agency indicated by the Legislature, and not selected by the people of the precinct. The court, therefore, in that case sustained the constitutional authority of the Legislature to authorize this county court to act as the agent of the precinct, and for it to issue and deliver their bonds without asking the consent of the people of the precinct. See also County Judge Shelby *vs.*
102 Shelby R. R. Co., 5 Bush., 225; Bracken County Court *vs.* Robertson County Court, 6 Bush., 70.

In the absence of a constitutional inhibi*t*ation the Legislature of a State may, in its discretion, indicate the mode and the agency by which a debt is created by a city, town, county, or precinct in a county. The debt must be created for a governmental purpose, but, if for this purpose, this case has no necessity for a submission to a vote of the people of the city, town, or county, or other municipality. R. R. Co. *vs.* Otto, 16 Wal., 19; — Wal., 83; 3 Otto, 93 U. S., p. 567; same, 266; Mount Pleasant *vs.* Beckwith, 100 U. S., 514.

In the case at bar the original debt had been created for a recognized public and governmental purpose, and the mode and agency for a settlement and adjustment was indicated by the Legislature, and this agency representing the municipality has compromised and settled the debt by giving new obligations for much less than the amount of the outstanding debt.

The fact that the new obligations were for much less than the original debt makes no difference in the constitutional question, however.

It is insisted that if the act of 1878 be constitutional, still it does not authorize the issual of the bonds sued on, which are coupons payable in Cincinnati, Ohio, to the holders of the original
103 bonds, or bearer, and they are *ultra vires*.

The act authorized the county court of Carter county to compromise and settle with the holders of the outstanding coupons and bonds. These bonds were payable out of the State and to bearer, and the county court was authorized to execute to the holders of said bonds and coupons severally the obligations of said county of Carter and those parts of the counties of Boyd and Elliott as had been a part of Carter.

The act provided that said obligations shall contain such stipulations as to interest as may be agreed upon by the court and holders of said bonds, but not at a greater rate than six per centum per annum, payable semi-annually.

Said obligations shall be due and payable at such times and be for such amounts as may be agreed upon by the court and the holders of the outstanding bonds, bearing a semi-annual interest at a rate to be agreed upon, not exceeding six per centum per annum.

It is understood that obligations as used in this act excludes the authority to issue a coupon bond, payable to the holder of the old bonds and bearer, and only authorizes the county court to issue an ordinary promissory note, non-negotiable, and payable to the holder of the old bonds only.

104 Obligations is a generic word, and includes all kinds of contracts by which contracting parties bind themselves, and, in the absence of limiting words, or the connection in which it is used, will be construed in its generic sense.

I perceive nothing in the provisions of this act, or the surrounding circumstances, which indicates that the Legislature intended to limit the obligations to be executed to the county's non-negotiable note.

The act does indicate the place of payment or limit it to this State. It in express terms gives the county court authority to execute the obligations payable at such times and for such amounts as might be agreed upon, and that the obligations should bear semi-annual interest.

The various provisions of the act itself show that it was not expected or intended the county court would compromise and settle a large debt and pay the holder of it immediately or within a short time by taxation.

The evident purpose of the act was to compromise and refund this debt, or a very large part of it.

The word obligations was probably used because of its large meaning, and that it included coupon bonds as well as promissory notes, or a mere acknowledgment of indebtedness.

105 In adjusting this outstanding debt it may have been useful to have the right to execute various kinds of obligations, but, however that may have been, I think there is nothing to limit the meaning of "obligations" to the mere acknowledgment of indebtedness or non-negotiable notes.

The suggestion of the learned counsel that the authority given in this act to execute the obligations to the holders of the outstanding bonds severally limits the meaning of obligations is not sustainable.

If the word was used for any especial purpose it was more likely to indicate the legislative authority for the county court to compromise with any of the holders of the outstanding debts, and that the authority to compromise and issue new bonds was not conditional upon all holders accepting the compromise.

The authority to issue coupon bonds is express, and there is no occasion to imply any authority which was exercised by the Carter county court unless it be for making them payable to bearer.

The express authority is to execute to the holders, and under this authority the bonds were executed to the holders of the outstanding bonds and bearer. If these bonds had been executed payable to the order of the holders of the outstanding bonds compromised they would have been within the express authority given.

106 Why is not payable to the holder and bearer equally within the authority given?

But, waiving this now, I think that as the county court of Carter had authority to execute and deliver "obligations," which included coupon bonds that in the absence of any limitation as to the character of these obligations, that court had the right to make them payable in the usual way, and that is to bearer as well as to the holder of the outstanding bonds.

The case of Supervisors *vs.* Galbreath, decided in the Supreme Court, 99 U. S., 216, is a much stronger case than the one at bar, and settles this question in favor of the plaintiff.

There the Mississippi Legislature authorized the supervisors of Calhoun county to issue bonds in aid of a railroad company, and directed that the bonds be "payable to the president and directors of the Grenada, Houston & Easton Railroad Company and their successors and assigns."

The bonds were made "payable to the Grenada, Houston and Easton Railroad company or bearer."

This was claimed to be a fatal defect, but the Supreme Court held the bonds valid.

There is no defect of parties, for the reason indicated, and

107 for the further reason that if the county courts of Boyd and Elliott might be sued there is nothing which compels the plaintiff to sue them.

The demurrers to the petition should be overruled, and it is so ordered.

And on February 12th, A. D. 1885, the following order [was] entered herein, viz:

DAVID SINTON *vs.* CARTER COUNTY.

This day came defendant, by A. Duvall, Esq., its counsel, and moved the court for an extension of the time heretofore given in which to file answer.

The court being sufficiently advised, it is ordered that the time in which to file answer be, and now is, extended to the 20th day of March, A. D. 1885.

And on March 25th, A. D. 1885, the following answer was filed herein, viz:

Answer.

Circuit Court of the United States, District of Kentucky, held at Covington.

DAVID SINTON, Plaintiff,
against
THE COUNTY OF CARTER, Defendant.

108 The defendant, The County of Carter, for answer to the petition herein, says it denies that it is or was indebted to the plaintiff in the alleged sum of $44,800, with interest, as alleged, or in any other sum.

Defendant refers to the acts of the General Assembly of Kentucky, one of which was approved January 9th, 1852, and the other approved March 1st, 1854, as best showing their own provisions and the powers thereby conferred, and the effect and proper construction of said acts are questions which the defendant submits to the court, as also the question of the effect and construction of the bonds alleged to have been executed under said acts. Defendant (as advised) denies that said bonds were authorized by the terms and provisions of said acts or either of them.

Defendant admits that said railroad company did sell or attempt to sell bonds in market overt- as alleged, but it denies that said company by its endorsement in blank on the back- of said bonds did make each or any of said bonds payable to bearer. Said company had no power under its *its* charter, or the said amendments thereto, to sell or transfer the legal right or title to said bonds save as provided in said amendment, and none of said bonds were

109 transferred and assigned, as by said statute required, either to J. C. Butler or said L. Worthington or to any other purchaser.

Defendant says it is true that said J. C. Butler and L. Worthington obtained the possession of said bonds, but whether they or either of them purchased said bonds for value before the maturity thereof defendant does not know, nor has it sufficient information to enable it to form a belief, nor has defendant such knowledge or information as to whether or not said Worthington transferred or delivered said ten bonds to the executors of said Butler.

Defendant admits that suits were instituted in this the United States circuit court for the district of Kentucky, at Covington, by said J. C. Butler, but defendant denies that said suits or either of them were brought on said bonds or either of them. Defendant avers that said suits were brought on the coupons for interest attached to said bonds; that one of said suits was commenced in or about the year 1874 and the other about two years afterwards, and on said last-named suit a judgment was duly entered in favor of the executors of said Butler, he having died, and against this defendant for

110 $36,519.44 with interest and costs, as alleged, but defendant denies that in said first-named suit or in any other suit a judg-

ment was duly or at all entered in favor of said executors of said J. C. Butler, dec'd, against defendant, Carter County, for $81,373.83 with interest and costs, or for any other sum.

Defendant denies that on the — of January, 1878, or on any other day, this defendant, Carter County, procured the passage of an act by the General Assembly of Kentucky entitled as alleged and set forth in the petition.

Defendant avers that at the time of the passage of said act the validity of said bonds was and had been for years disputed; that no part of the Lexington and Big Sandy railroad had ever been constructed, and it was well known never would be; that the holders of said bonds had obtained them for greatly less than their face value and were doubtful of their legal right or ability to enforce their collection by law.

Said holders were therefore much more interested than the defendant in procuring the compromise provided for in said act.

It is true as alleged by the plaintiff that by the terms of said act defendant "was empowered to issue the bonds of Carter county and those parts of the counties of Boyd and Elliott taken from
111 Carter county, bearing interest from date, to the holders of said bonds of 1852; and defendant avers that the county court of said county, in attempting to execute the bonds or obligations which, by the terms of said act, said court was empowered to execute to the holders, exceeded the authority and power so conferred upon said court by making said obligations or *or* bonds payable to said holders or bearer, and also by executing coupons for interest upon said bonds, payable to bearer, which latter were unauthorized.

Defendant admits that plaintiff has in petition correctly set out and copied the orders made by said county court, including the agreement between J. R. Ward, commissioner, appointed by said court, and the executors of said J. C. Butler, dec'd. The order of said court appointing said commissioner is filed herewith as part of this answer, marked (A).

By the terms of said agreement the surrender by said executors of said Butler "unto the county court of Carter county [of] sixty-four of the bonds executed in aid of the construction of the Lexington and Big Sandy railroad, with all unpaid interest coupons thereon," and the relinquishment unto said county court of the *pro rata* of sixty-one bonds in two certain judgments hereinbefore described and set forth, constitutes the entire consideration of the agreement on
112 the part of the county to execute said bond, and of the subsequent execution and delivery by said court. Said agreement, the ratification thereof by said county court, and *by* the execution by said court of the bonds or obligations aforesaid, was made and done under the belief by all parties concerned in said transactions that the said alleged judgment for $81,273.68, with interest as aforesaid, had, in fact, been rendered and entered by the United States circuit court aforesaid; whereas said supposed judgment had not and has not been rendered by said court, and defendant says the agreement aforesaid, the ratification thereof by said court, and the

execution and delivery of said bonds, was the result of a mutual mistake as to said fact on the part of the parties aforesaid, and defendant says that said bonds or obligations sued on in this action were executed and delivered without consideration to the extent of the alleged amount or value of said supposed judgment.

Defendant denies that the sixteen bonds alleged to have been ordered and executed by said court, on the application of said L. Worthington *was executed*, were so executed in pursuance or in conformity with any authority conferred or attempted to be conferred by the terms of said act of 1878, but they were, on the
113 contrary, executed in disregard and violation of said act, as shown by the orders of said court exhibited with and copied in plaintiff's petition.

Defendant denies that by the express terms of each or any of said bonds the defendant acknowledged itself to be indebted to said executors of Joseph C. Butler, deceased, [in] the sum of $1,000.00, and refer- to said bonds themselves, when filed, as best showing their form and effect, and defendant denies that said bonds were tendered by it or accepted by said executors in discharge or payment of the alleged sixty bonds, or of the alleged ten bonds, or of the alleged *pro rata* of said supposed judgments, but only in conformity with and in consummation of the compromise which said county court and its officers attempted to make under the authority supposed to have been conferred by said act of 1878.

Defendant refers to the two acts of the General Assembly of Kentucky creating the counties of Boyd and Elliott as best showing the meaning, effect, and proper construction of said acts.

Defendant says it has not sufficient knowledge or information to form a belief as to whether or not plaintiff is the owner, holder, or bearer in his own right of the seventy-six bonds numbered, as
114 alleged, from No. 5 t· No. 117; or as to whether or not he purchased said bonds, (r any part of them, for value; or as to whether or not he purchased the same before maturity, together with 540 coupons attached to said seventy-six bonds. Defendant says that if plaintiff purchased at all the bonds numbered and marked as hereinafter set out he purchased them after and not, as alleged, before their maturity. The bonds here referred to are numbered and marked as follows, to wit; A No. 5, A Nos. 27, 28, 29, 31, 33 and 108 of said bond A No. 5. C. C. Magann and Stephen Nethercutt, citizens and residents of Carter county, Kentucky, claimed to be and were the owners and holders after the maturity of said bond; and the said C. C. Magann, after the maturity of the six bonds above described as Nos. 27, 28, 29, 31, 33, and 108, claimed to be and was the owner and holder thereof, as also of six other bonds numbered, respectively, 111, 60, 67, 74, 117, & 101. Said Magann and Nethercutt, on the — day of ——, brought suit on said bond No. 5, claiming to be the owners and holders thereof and praying for judgment thereon, and the said C. C. Magann, on the — day of ——, brought his suit on the six bonds above described, Nos. 27, 28, 29, 31, 33, & 108, and praying judgment thereon, together with coupons
115 for interest; said suits were instituted in the circuit [court] for

Carter county, and were therein pending before and at the time plaintiff brought this action.

The defendant, having answered, pray- to be hence dismissed.

A. DUVALL,
Attorney for Defendant.

And on May 12th, A. D. 1885, the following order [was] entered herein, viz:

DAVID SINTON *vs.* CARTER COUNTY.

This day came plaintiff and moved the court that defendant be required to paragraph his answer herein.

The court being advised, it is ordered that said motion prevail and that said answer be paragraphed.

And on May 13th, A. D. 1885, the following order [was] entered herein, viz:

DAVID SINTON *vs.* CARTER COUNTY.

This day came the defendant, by its counsel, A. Duvall, Esq., and tendered its answer, duly paragraphed.

Said answer, as paragraphed, is in words and figures as follows, viz:

116 *Answer.*

Circuit Court of the United States, District of Kentucky, held at Covington.

DAVID SINTON, Plaintiff,
against
THE COUNTY OF CARTER, Defendant.

1. The defendant, the County of Carter, for answer to the petition herein, says it denies that it is or was indebted to the plaintiff in the alleged sum of $44,800, with interest, as alleged, or in any other sum.

2. Defendant refers to the acts of the General Assembly of Kentucky, one of which was approved January 9th, 1852, and the other approved March 1st, 1854, as best showing their own provisions and the powers thereby conferred, and the effect and proper construction of said acts are questions which the defendant submits to the court, as also the question of the effect and construction of the bonds alleged to have been executed under said acts, [and] defendant (as advised) denies that said bonds were authorized by the terms and provisions of said acts or either of them.

3. Defendant admits that said railroad company did sell or attempt to sell bonds in market overt-, as alleged, but it denies that said company by its indorsement in blank on the back- of
117 said bonds did make each or any of — payable to bearer. Said company had no power under its charter or the said amendments thereto to sell or transfer the legal right or title to said

bonds, save as provided in said amendment, and none of said bonds were transferred and assigned, as by said statute required, either to J. C. Butler or said L. Worthington, or to any other purchaser.

4. Defendant says it is true that said J. C. Butler and L. Worthington obtained the possession of said bonds, but whether they or either of them purchased said bonds for value before the maturity thereof defendant does not know, nor has it sufficient information to enable it to form a belief, nor has defendant such knowledge or information as to whether or not said Worthington transferred or delivered said ten bonds to the executors of said Butler.

5. Defendant admits that suits were instituted in this the United States circuit court for the district of Kentucky, at Covington, Ky., by said J. C. Butler, but defendant denies that said suits or either of them were brought on said bonds or either of them. Defendant avers that said suits were brought on the coupons for interest attached to said bonds; that one of said suits was commenced in or about the year 1874 and the other about two years afterwards,

118 and on said last-named suit a judgment was duly entered in favor of the executors of said Butler, he having died, and against this defendant, for $36,519.44, with interest and costs, as alleged, but defendant denies that in said first-named suit or in any other suit a judgment was duly or at all rendered in favor of said executors of said J. C. Butler, dec'd, against defendant, Carter County, for $81,373.83, with interest and costs, or for any other sum.

6. Defendant denies that on the — day of January, 1878, or on any other day, this defendant, Carter County, procured the passage of an act by the General Assembly of Kentucky entitled as alleged and set forth in the petition. Defendant avers that at the time of the passage of said act the validity of said bonds was and had been for years disputed; that no part of the Lexington and Big Sandy railroad had ever been constructed, and, it was well known, never would be; that the holders of said bonds had obtained them for greatly less than their face value, and were doubtful of their legal right or ability to enforce their collection by law. Said holders were therefore much more interested than the defendant in procuring the compromise provided for in said act.

119 7. It is true, as alleged by plaintiff, that by the terms of said act defendant was empowered to issue the bonds of Carter county and those parts of the counties of Boyd and Elliott taken from Carter county, bearing interest from date, to the holders of said bonds of 1852; and defendant avers that the county court of said county in attempting to execute the bonds or obligations which, by the terms of said act said court was so empowered to execute to the holders, exceeded the authority and power so conferred upon said court by making said obligations or bonds payable to said holders or bearer, and also by executing coupons for interest upon said bonds payable to bearer, which latter were unauthorized.

8. Defendant admits that plaintiff has in his petition correctly set out and copied the orders made by said county court, including the agreement between J. R. Ward, commissioner, appointed by said

court, and the executors of said J. C. Butler, dec'd. The order of said court appointing said commissioner is filed herewith as part of this answer, marked A.

By the terms of said agreement the surrender by said executors of said Butler " unto the county court of Carter county [of] sixty-four of the bonds executed in aid of the construction of the Lex-
120 ington and Big Sandy railroad, with all unpaid interest coupons thereon," and the relinquishment unto said county of the *pro rata* of sixty-one bonds in two certain judgments hereinbefore described and set forth, constitutes the entire consideration of the agreement on the part of the county to execute said bond and of the subsequent execution and delivery by said court. Said agreement, the ratification thereof by said county court, and *by* the execution by said court of the bonds or obligations aforesaid was made and done under the belief by all parties concerned in said transactions that the said alleged judgment for $81,373.68, with interest as aforesaid, had in fact been rendered and entered by the United States circuit court aforesaid, whereas said supposed judgment had not and has not been rendered by said court; and defendant says the agreement aforesaid, the ratification thereof by said court, and the execution and delivery of said bonds was the result of a mutual mistake as to said fact on the part of the parties aforesaid; and defendant says that said bonds or obligations sued on in this action were executed and delivered without consideration to the extent of the alleged amount or value of said supposed judgment.

121 9. Defendant denies that the sixteen bonds alleged to have been ordered and executed by said court on the application of said L. Worthington *was executed* were so executed in pursuance of or in conformity with any authority conferred or attempted to be conferred by the terms of said act of 1878, but they were, on the contrary, executed in disregard and violation of said act, as shown by the orders of said court exhibited with and copied in plaintiff's petition.

10. Defendant denies that by the express terms of each or any of said bonds the defendant acknowledged itself to be indebted to said executors of Joseph C. Butler, deceased, — the sum of $1,000.00, and refer- to said bonds themselves when filed as best showing their form and effect, and defendant denies that said bonds were tendered by it or accepted by said executors in discharge or payment of the alleged sixty bonds or of the alleged ten bonds or of the alleged *pro rata* of said supposed judgments, but only in conformity with and in consummation of the compromise which said county court and its officers attempted to make under the authority supposed to have been conferred by said act of 1878.

11. Defendant — to the two acts of the General Assembly of
122 Kentucky creating the counties of Boyd and Elliott as best showing the meaning, effect, and proper construction of said acts.

12. Defendant says that it has not sufficient knowledge or information to form a belief as to whether or not pl'ff is the owner, holder, or bearer in his own right of the seventy-six bonds numbered, as

alleged, from No. 5 to 117, or as to whether or not he purchased said bonds or any part of them for value, or as to whether or not he purchased the same before maturity, together with 540 coupons attached to said seventy-six bonds.

Defendant says that if plaintiff purchased at all the bonds numbered and marked as hereinafter set out he purchased them after and not, as alleged, before their maturity. The bonds here referred to are numbered and marked as follows, to wit: A, No. 5; A, Nos. 27, 28, 29, 31, 33, & 108; of said bonds A, No. 5, C. C. Magann and Stephen Nethercutt, citizens and residents of Carter county, Kentucky, claimed to be and were the owners and holders after the maturity of said bonds; and the said C. C. Magann, after the maturity of the six bonds above described as Nos. 27, 28, 29, 31, 33, & 108, claimed to be and was the owner and holder thereof, as also of six other bonds, numbered, respectively, 111, 60, 67, 74, 117, & 101.

123 Said Magann and Nethercutt on the — day of —— brought suit on said bond No. 5, claiming to be the owners and holders thereof and praying for judgment thereon, and the said C. C. Magann on the — day of —— brought his suit on the six bonds above described, Nos. 27, 28, 29, 31, 33, & 108, and praying judgment thereon, together with coupons for interest. Said suits were instituted in the circuit — for Carter county and were therein pending before and at the time plaintiff brought this action.

The defendant, having answered, prays to be hence dismissed.

A. DUVALL,
Attorney for Defendant.

And on May 13th, A. D. 1885, the following order [was] entered herein, viz:

DAVID SINTON *vs.* CARTER COUNTY.

The plaintiff, by his counsel, J. W. Stevenson and E. B. Wilhoit, moves the court to strike out paragraphs Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 in the answer as presenting in law any issue traversible to the allegations of plaintiff's petition in manner or form set out. Said motion coming on to be heard, argument was had

124 thereon, and the court, now being sufficiently advised, orders that said motion as to paragraphs Nos. 2, 3, 4, 6, 7, 9, 10, and 11 prevail, and that said paragraphs be, and the same are now, stricken out, to which ruling of the court defendant, by its counsel, A. Duvall, excepts.

The court further orders that said motion to strike out as to paragraphs Nos. 1, 5, 8, and 12 be, and the same is, overruled, to which ruling of the court plaintiff, by his attorneys, Mess. E. B. Wilhoit and J. W. Stevenson, excepts.

And on May 13th, A. D. 1885, the following order [was] entered herein, viz:

DAVID SINTON *vs.* CARTER COUNTY.

Now comes plaintiff, David Sinton, by his attorneys, Mess. E. B. Wilhoit and Stevenson and Geobel, and demurs specially to paragraphs Nos. 1, 5, 8, & 12 of said answer as not presenting any issue of fact traversible by a jury and not traversing the material allegations of plaintiff's petition.

Wherefore plaintiff prays judgment for the amount of his debt, interest, and costs, as set out in his petition.

Whereupon, the case being submitted to the court on said demurrer without argument, the court being advised—

125 It is ordered that said demurrer be, and the same is, sustained as to paragraphs Nos. 1, 5, and 8; to which ruling of the court defendant, by his counsel, excepts; and it is further ordered that said demurrer as to the 12th paragraph be, and the same is, overruled; to which ruling of the court plaintiff, by his counsel, excepts.

On motion of defendant, by his counsel, twenty days is given in which to file amended answer, and the case is set for hearing at chambers, in Louisville, the 16th day of June, A. D. 1885.

And on June 16th, A. D. 1885, the following order [was] entered herein, viz:

DAVID SINTON *vs.* CARTER COUNTY.

This day came the parties, by their attorneys, and the evidence offered by both parties having been heard the defendant, by counsel, offered to file an amendment to the twelfth paragraph of its answer herein; to the filing of which plaintiff objected, but the court being advised overruled said objection and allowed said answer to be filed, to which ruling the plaintiff excepted; and the plaintiff there-

126 upon discontinued the action as to the several bonds and coupons set out and described in the twelfth paragraph of the original answer of the defendant, and in the said amendment thereto this day filed, to wit, the bonds A Nos. 5, 27, 28, 29, 31, 33, and 108; also bonds Nos. 111, 60, 67, 74, 117, and 101; also bonds Nos. 11, 105, 13, 14, 18, 106, 20, 21, 22, 24; also as to coupons as follows:

1 coupon due January [1st], 1879, for $30.
1 coupon, due July 1st, 1879, for $30.
14 coupons, due January 1st, 1880, for $420.00.
17 coupons, due July 1st, 1880, for $510.00.
15 coupons, due January 1st, 1881, for $450.00.
15 coupons, due July 1st, 1881, for $450.00
11 coupons, due January 1st, 1882, for $300.00.
11 coupons, due July 1st, 1882, for $330.00.
11 coupons, due January 1st, 1883, for $330.00.
12 coupons, due July 1st, 1883, for $360.00.
6 coupons, due January 1st, 1884, for $180.00.
6 coupons, due July 1st, 1884, for $180.00.
1 coupon, due January 1st, 1882, for $30.00.

And the case being as to the other issues made by the pleadings the court adjudges in favor of the plaintiff.

The following is the amendment referred to in the foregoing order, to wit:

127 *Amended Answer.*

Circuit Court of the United States, District of Kentucky, held at Covington.

DAVID SINTON, Plaintiff,

against

THE COUNTY OF CARTER, Defendant.

By leave of court, the defendant amends the 12th paragraph of its answer herein and says it denies that the plaintiff ever purchased for value, or before their maturity, any or either of the following bonds sued on by plaintiff in this action, to wit:

Two bonds, Nos. 11 and 105, due July 1, 1880.
Four bonds, Nos. 13, 14, 18, and 106, due July 1, 1881.
Four bonds, Nos. 20, 21, 22, and 24, due July 1, 1882.

Defendant also denies that the plaintiff purchased for value, or before their maturity, any or either of the following coupons sued on in this action, to wit:

1 coupon, due January 1, 1879, for $30.
1 coupon, due July 1, 1879, for $30.
14 coupons, due January 1, 1880, amounting to $420.
17 coupons, due July 1st, 1880, amounting to $510.00.
15 coupons, due January 1st, 1881, amounting to $450.00.
15 coupons, due July 1st, 1881, amounting to $450.00.
11 coupons, due January 1st, 1882, amounting to $300.00.
11 coupons, due July 1st, 1882, amounting to $330.00.
11 coupons, due January 1st, 1883, amounting to $330.00.
12 coupons, due July 1st, 1883, amounting to $360.00.
6 coupons, due January 1st, 1884, amounting to $180.00.
6 coupons, due July 1st, 1884, amounting to $180.00.
One coupon, due January 1st, 1882, amounting to $30.

128 Defendant is informed, and charges, that the said bonds and coupons are in fact the property of one C. C. Magann; that said Magann, being the owner and holder of said bonds, on or about the 1st day of October, 1884, by a written agreement of that date, placed said bonds and coupons in the hands of the plaintiff merely to enable the plaintiff to collect the same by means of this action—the full amount of said bonds and coupons by the agreement aforesaid, and all the accumulations of interest thereon, to be paid over when collected, and, if collected, to said Magann, who is to pay his ratable proportion of the costs and expenses of said collection; and plaintiff avers that said Magann was at the time of the institution of this suit, and yet is, the beneficial and real owner of

the bonds and coupons aforesaid and also the bonds and coupons set out and described in the 12th paragraph of the original answer herein.

Wherefore defendant prays, &c.

A. DUVALL,
For Defendant.

And on June 16th, A. D. 1884, the following judgment [was] entered herein, viz:

DAVID SINTON
vs.
THE COUNTY OF CARTER, in the State of Kentucky.

129 The court being sufficiently advised in the premises, it seems to the court that the law is for the plaintiff. The nine bonds and five hundred and twenty-five coupons due at the institution of this action, and as to which this action was not discontinued, with interest *from* them severally from their respective dates of maturity to the 16th day of June, 1885, amount to the sum of twenty-nine thousand one hundred and twenty-one dollars and fifty-four cents ($29,121.54). It is therefore considered and adjudged by the court that the plaintiff, David Sinton, recover of the defendant, The County of Carter, in the State of Kentucky, the sum of twenty-nine thousand one hundred and twenty-one dollars and fifty-four cents ($29,121.54), with interest thereon *after* the rate of six per centum per annum from the 16th day of June, 1885, till paid, together with his costs herein expended, for which the writ of *fieri facias* may issue.

The bonds and coupons made by the defendant and for which this judgment is given are the following, to wit:

Bond A, No. 12, with coupons Nos. 1, 2, 3, and 4.
Bond A, No. 19, with coupons Nos. 1, 2, 3, 4, 5, and 6.
Bond A, No. 23, with coupons Nos. 3, 4, 5, 6, 7, and 8.
Bond A, No. 26, with coupons Nos. 6, 7, and 8.
Bond A, No. 33, with coupons Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10.
Bond A, No. 35, with coupons Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
Bond A, No. 37, with coupons Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
Bond A, No. 40, with coupons Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
Bond A, No. 109, with coupons Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.

And the following coupons, to wit:

From bond A, No. 70, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 63, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
130 From bond A, No. 56, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 113, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 49, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 42, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 84, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 77, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 91, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 98, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 90, Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.

From bond A, No. 55, Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 41, Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 12.
From bond A, No. 47, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 110, Nos, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 54, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 102, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 68, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 75, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 61, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 82, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 81, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 95, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 89, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 96, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 112, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 51, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 72, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 66, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 58, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 86, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 94, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 80, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 65, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
131 From bond A, No. 73, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 53, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 46, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 44, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 59, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 87, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 45, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 100, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 52, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 93, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
From bond A, No. 79, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.

Each of said bonds is for one thousand dollars ($1,000), and each of said five hundred and twenty-five (525) coupons is for thirty ($30).

And on a day following, to wit, on the 10th day of July, A D. 1885, a *fi. fa.* issued from the clerk's office on the foregoing judgment, which *fi. fa.* is in words and figures as follows, viz.:

Circuit Court of the United States, District of Kentucky (at Covington).

The President of the United States of America to the marshal of the district of Kentucky, Greeting:

You are commanded that of the estate of Carter county, of the State of Kentucky, you cause to be made the sum of twenty-nine thousand one hundred and twenty-one dollars and fifty-four cents ($20,121.54), with interest at six per cent. per annum from
132 June 16th, 1885, until paid, which David Sinton, lately in

our circuit court of the United States, in said district of Kentucky, sitting at Covington, recovered against it for a debt; and also the sum of $137.75, which was adjudged the said David Sinton for his costs by him in that behalf expended, whereof the said Carter county, of the State of Kentucky, is convict, as appears to us of record, and that you have the same before the judges of our said circuit court of the United States for said district of Kentucky, at Covington, on the first Monday in September next, to render unto the said David Sinton his said debt, interest, and costs aforesaid, and have then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, at Covington, this 10 day of July, A. D. 1885, and of our Independence the 110th year.

[SEAL.] JOS. C. FINNELL, *Clerk.*

Which *fi. fa.* was returned and filed Sept. 1st, A. D. 1885, having thereon the following endorsement, viz.:

"Came to hand July 14th, 1885, at 10 o'clock a. m., and demanded payment of the within *fi. fa.* of the county judge of Carter county (Judge Joseph H. Strother), in Carter county, Kentucky, on
133 the 15th day of August, 1885, and payment was not made but refused, and no property found out of which to make the within *fi. fa.* or any part thereof.

A. J. GROSS, *U. S. M.*,
By B. F. WARNOCK, *D. M.*

And on a day following, to wit, on the 10th day of December, A. D. 1885, the following order entered herein:

DAVID SINTON *vs.* CARTER COUNTY.

This day came the parties plaintiff and defendant, by their respective attorneys, and, on motion of the defendant, an appeal to the Supreme Court of the United States is granted said defendant from the judgment rendered herein, rendered on the 16th day of June, 1885, said appeal having been prayed and granted at the time of the rendition of said judgment, and the entry of the same of record having been ommitted by mistake, it is now entered *nunc pro tunc.* By consent one of the bonds sued on and described in the petition, to wit, bond A, No. 12, and also one of the coupons thereto attached, to wit, coupon No. 1, were this day filed and are to be taken and treated as a part of the record; and it is agreed in open court that all of the bonds and coupons mentioned and described in the petition were used upon the trial of this action, *and that they were used upon the trial of this action*, and that they were substan-
134 tially of the same character, differing only as to dates, amounts, and times of payment.

And on a day following, to wit, on the 4th day of September, A. D. 1886, came the defendant, by counsel, and filed its certain bond

for costs of its appeal to the Supreme Court of the United States, which said bond was and is in words and figures [as] follows, to wit:

Circuit Court of the United States, District of Kentucky.

DAVID SINTON *vs.* THE COUNTY OF CARTER.

Know all men by these presents that we, The County of Carter & Alvin Duvall, are held and firmly bound unto David Sinton in the sum of five hundred dollars, to be paid to the said David Sinton, [his] executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 4th day of September, A. D. 1886.

Whereas the above-named County of Carter hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States for the district of Kentucky, at Covington:

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Now, therefore, the condition of this obligation is such that if the above-named County of Carter shall prosecute its said writ of error to effect and answer costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

A. DUVALL. [L. S.]

Approved:
JNO. W. BARR, *Judge.*

UNITED STATES OF AMERICA, }
District of Kentucky, } *ss:*

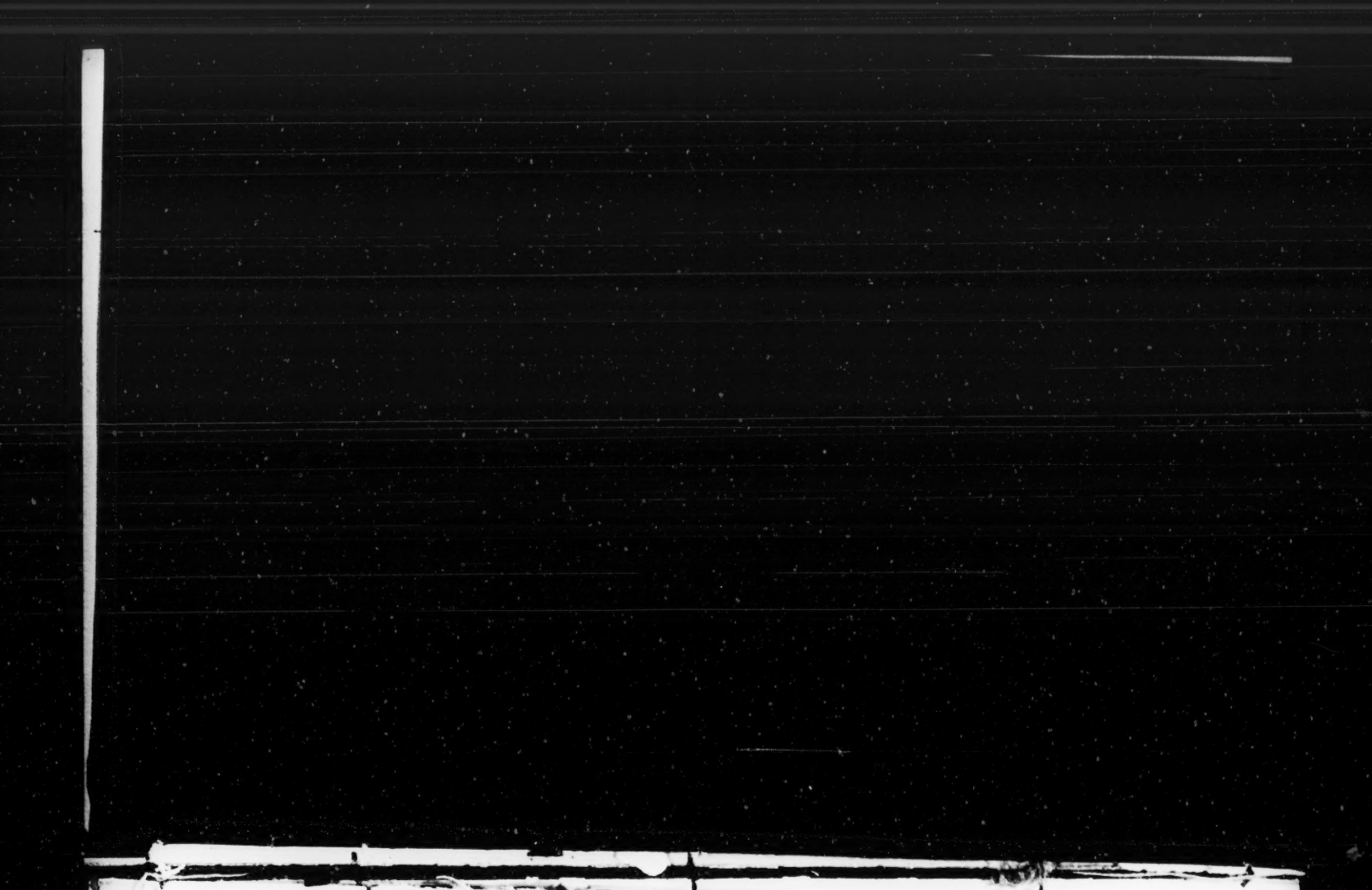
I, Joseph C. Finnell, clerk of the United States circuit court for the sixth judicial circuit, district of Kentucky, at Covington, do hereby certify that the foregoing one hundred and twenty-eight pages (this included) contain a true and correct transcript of the record and proceedings in the case, wherein David Sinton is plaintiff and the County of Carter, in the State of Kentucky, is defendant, as appears from the files and records of my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at Covington, this sixth day of September, A. D. 1886.

[Seal 6th Circuit Court, Ky. Dist., U. S. of America.]

JOSEPH C. FINNELL,
Clerk U. S. Circuit Court, at Covington.

Endorsed on cover: Kentucky C. C. U. S. No. 1287. The County of Carter, plaintiff in error, *vs.* David Sinton. Filed November 15, 1886.



SUPREME COURT OF THE UNITED STATES

THE COUNTY OF CARTER, Plaintiff in Error,

VERSUS

DAVID SINTON, Defendant in Error.

Brief for Plaintiff in Error.

STATEMENT.

The Lexington and Big Sandy Railroad Company was chartered by an act of the Legislature, approved January 9, 1852. (Sess. Acts 1851–52, p. 779).

By the twenty-eighth section of the charter, certain counties, including Carter, were authorized to subscribe to the capital stock of the company, and to raise the amount so subscribed either by taxation or by borrowing the amount thereof, payable in the way and on the terms deemed most advisable. There was no express authority to issue bonds.

It is alleged in the petition that in the same year Carter county subscribed $75,000 to the stock of the company, and issued its seventy-five bonds therefor, for $1,000 each, payable in thirty years, to bearer.

By an amendment to the charter approved March 1, 1853 (2 vol. Sess. Acts, 1853–54, p. 8), it was provided "that said "company may transfer, by the indorsement of the President, "any bonds which have been or may be issued to said com- "pany for stock subscribed or which may be subscribed to the "capital stock of said company, and, by such indorsement, to "bond the assets of said company, as the law now stands in "relation to assignments generally."

The bonds thus referred to were put upon the market as commercial securities.

In 1859 the county of Boyd was established, and in 1867 the county of Elliott. The acts establishing the two counties both provided that nothing contained therein should be construed to release the citizens and property included in those parts of the new counties which originally belonged to Carter, from being held liable for the bonds and interest issued to the Lexington and Big Sandy Railroad Company. (Sess. Acts 1859–60, p. 34; Sess. Acts 1869, p. 72, sec. 7.)

In 1873, J. C. Butler, who is alleged to have become the owner of most of those bonds of 1852, "by purchase in market overt," sued on the *coupons* attached thereto, and after a litigation, the nature of which need not be here noticed, it is alleged in the petition that his executors, he having died pending the suit, recovered an alleged judgment against Carter county for about $81,000. But there is no such judgment. In a subsequent suit on other maturing coupons, the same parties, in 1876, recovered a judgment for about $34,000. The plaintiff in the present action failed to make the records of those suits parts of his petition. It does not appear that any effort was ever made to enforce the two judgments. It would be going out of the record to refer to the reasons which prevented any such effort.

Thus matters stood until the passage by the General Assembly of the act approved January 30, 1878, upon the validity and effect of which the present case mainly turns.

The act, including the title is as follows:

AN ACT authorizing the county of Carter, and those parts of the counties of Boyd and Elliott taken from Carter county, to compromise and settle with the holders of the bonds and coupons of interest executed by Carter county in its subscription to the capital stock of the Lexington and Big Sandy Railroad Company, and to levy and collect a tax for that purpose.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That power and authority is hereby given to the county of Carter, and those parts of the counties of Boyd and Elliott taken from Carter county, to compromise and settle with the holders of the bonds and coupons of interest executed by Carter county in its subscription to the capital stock of the Lexington and Big Sandy Railroad Company. Said compromise and settlement shall be made by the Carter County Court, composed of the County Judge and a majority of the Justices of the Peace in commission of Carter county, for and on behalf of the county of Carter, and those parts of the coun-

ties of Boyd and Elliott taken from Carter county. Said court may make said compromise through a commissioner appointed for that purpose; but before the same shall become binding on the county of Carter, it shall be approved by the Carter County Court, constituted as county levy courts are required by law to be constituted. Said court may execute to the holders of said bonds and coupons of interest, severally, the obligations of said county of Carter, and those parts of the counties of Boyd and Elliott taken from Carter county in their formation, which shall be signed by the County Judge of Carter county, and attested by the Clerk of said court. Said obligations shall contain such stipulations as to interest as may be agreed upon by the court and holders of said bonds and coupons of interest, or either of them, but not at a greater rate than six per centum per annum, payable semi-annually. Said obligations shall be due and payable at such times, and be for such amounts, as may be agreed upon by the court and holder or holders of said bonds and coupons.

§ 2. That the County Court of Carter county, composed of the presiding Judge and a majority of the Justices of the Peace in commission, may, at the regular June term, 1878, of said court, levy an *ad valorem* tax on the taxable property of said county of Carter, and those parts of the counties of Boyd and Elliott taken from Carter county, according to the assessment lists as shall be reported by the Assessor of Carter county for the year 1878, whose duty it shall be to annually assess and take a list of the taxable property in those parts of Boyd and Elliott counties taken from Carter county in the formation of said counties, which lists shall be taken in the same manner, and be returned to the Clerk's office of the Carter County Court at the same time, he is now required by law to return the assessment book of Carter county. Said levy shall be laid by said court in such an amount as it may deem proper, and that may be necessary to meet the obligations and interest given in said compromise and settlement, and expenses of collection.

§ 3. The County Court of Carter county, at its regular Court of Claims each year, commencing at its January term, 1879, may make a similar levy, until there shall be raised a sum sufficient to fully pay off and discharge the obligations given in any compromise that may be made, and the interest thereon, and the costs and expenses of collection. Said court may, from time to time, make such orders applying said funds thus levied to the discharge of said obligations and interest; and the Sheriff or other officer who shall collect said taxes shall be bound by said orders, and he and his sureties shall be liable, on the bond executed by them as hereinafter required, to the person or persons entitled to receive said funds on the orders of said court.

§ 4. The County Court of Carter county may appoint a collector of said taxes authorized to be levied by this act. Said

appointment shall be made each year at the same term that said taxes may be levied, and said collector shall have the same powers to collect said taxes in Carter county, and those parts of Boyd and Elliott counties taken from Carter county, as Sheriffs now have by law in collection of State revenue; he shall receive the same compensation, and the laws now in force in this State in relation to the State revenue shall govern said collector in the collection of said taxes; he shall execute, in the County Court of Carter county, at the time of his appointment, a bond, with good, solvent, personal securities, worth, in property in this State, subject to execution, over and above their just debts, double the amount to be raised by the levy of said taxes for the year for which he may be appointed; said bond shall be executed to the Commonwealth of Kentucky, and shall be, in form, substantially as follows, viz: We, A. B., collector of the taxes laid by the Carter County Court, at its —— term, 18—, for the year 18—, for the county of Carter, and those parts of the counties of Boyd and Elliott taken from Carter county, to meet the obligations and interest executed to the holders of the bonds and coupons of interest executed by Carter county in discharge of its subscription to the capital stock of the Lexington and Big Sandy Railroad Company, principal, and C. D. and E. F., his sureties, jointly and severally bind and oblige ourselves to the Commonwealth of Kentucky, that the said A. B., as such collector, shall well and truly collect, account for, and pay over to the person or persons authorized to receive the same, under and by virtue of the orders of the Carter County Court, the taxes levied by said court at its ——— term, 18—, for the year 18—, to pay the obligations and interest thereon given to the holders of the bonds and coupons of interest given by Carter county, in its subscription to the capital stock of the Lexington and Big Sandy Railroad Company, and that he shall, when called upon by the Carter County Court, settle his accounts, and shall pay over the amount found due by him to the person or persons entitled to receive the same, by the orders of said court; and that the said A. B. shall, in all things, well and truly demean itself, and perform the duties of collector of the taxes aforesaid for said year 18—. Witness our hands this — day of ———, 18—. Said court may appoint the Sheriff of Carter county, or one of its own members, collector of said taxes, but said appointment shall be made annually. On the failure of said collector to pay over the moneys collected by him, he and his sureties shall be liable on his official bond for the amount collected by him, or which he might have collected, and ten per centum damages thereon, to be recovered by the person or persons to whom the same shall be payable, on the orders of the Carter County Court.

§ 5. This act shall take effect and be in force from and after its passage; but nothing in this act shall be so construed as to effect or make more valid the bonds and coupons of interest

given by Carter county in its subscription to the capital stock of the Lexington and Big Sandy Railroad Company than they were before the passage of this act.

Approved January 30, 1878.

The Carter County Court proceeded promptly to execute the powers supposed to have been conferred by this act.

J. C. Butler, of Ohio, had become the holder of *sixty-four* of the seventy bonds which had been issued under the act of 1853, and L. Worthington, of Ohio, had become the owner of *ten* of them. The latter "on the ——— day of ———, 1878, transferred and delivered his ten bonds aforesaid" to Henry Peacher and Richard O. Butler, executors of J. C. Butler, deceased, who had previously died. (See record, pages 4 and 5.) So that, at the time of the passage of the act, January 30, 1878, these executors held *all* those bonds but one. That one has never been "compromised or settled."

In June, 1878, the County Court of Carter county appointed J. R. Ward, its Commissioner, "to compromise and settle with the holders of the bonds of Carter county executed in aid of the construction of the Lexington and Big Sandy Railroad Company," who reported to the court an agreement he had made with the executors of Butler for the settlement of sixty-four of said bonds, etc. The agreement stipulates as follows:

"The said executors hereby agree to surrender unto the county court of Carter county sixty-four of the bonds executed in aid of the construction of the Lexington and Big Sandy Railroad, with all unpaid interest coupons thereon; and to relinquish unto said county court the *pro rata* of sixty-one bonds in two certain judgments, rendered in their favor by the United States Circuit Court at Covington for the Kentucky district, against the said county of Carter, viz: Judgment for $81,373.68, with interest thereon from the 30th May, 1874, and $64 costs; and judgment for $36,519.40, with interest thereon from 15th April, 1876, and $66.15 costs. In consideration of said surrender and relinquishment, it is agreed on the part of said county court that the said court shall execute, as provided in said act of Assembly, the bonds of said county of Carter, and those parts of the counties of Elliott and Boyd taken from Carter, payable to the said Henry Peacher and Richard O. Butler, executors of Joseph C. Butler, *or bearer*, of the denomination of one thousand dollars, and one hundred and three in number, with semi-annual interest warrants or coupons," etc.

The county court approved and confirmed this agreement, and caused the execution of the 103 bonds accordingly. (Record, pages 6 and 7.)

At its January term, 1879, the County Court made a further order, reciting that L. Worthington, through the executors of Butler, had "made a proposition to settle and compromise the ten several bonds" held by him, which proposition was accepted by the court "acting for the county of Carter and those parts of the counties of Boyd and Elliott taken from Carter county;" and ordered the execution of sixteen additional bonds, similar as to dates and other particulars to those already described. (Record, page 8.) And they were ordered to be delivered to said executors for said L. Worthington.

It thus appears that the ten old bonds held by (or for) L. Worthington were "compromised and settled" by the court itself, without the intervention of the Commissioner appointed for that purpose. Of this the record furnishes no explanation.

On the 1st of November, 1884, the defendant in error brought this action against the county of Carter, the plaintiff in error, in the Circuit Court of the United States for the District of Kentucky, at Covington, claiming that said county, "a municipal corporation," was indebted to him in the sum of $44,800, and proceeded to set out in his petition the origin and execution of the bonds and coupons referred to, averring that he (plaintiff) "is the owner and holder of seventy-six of said defendant's bonds in his own right; that he purchased the same for value before the maturity thereof," setting out in separate paragraphs of his petition the bonds and coupons on which he seeks to recover.

The plaintiff in error demurred to the petition, generally and specially. The Circuit Court overruled the demurrer for the reasons stated in its opinion (page 46). The defendant then filed its answer. Objections to which, except one paragraph, were sustained by the court, and the judgment now complained of was rendered. (Page 60.)

Argument.

The questions first to be noticed are those which arise on the demurrer to the petition.

I submit, in the first place, that the statute under which the bonds sued on were executed is in violation of section 37, article 2, of the Constitution of Kentucky, which declares:

"No law enacted by the General Assembly shall relate to more than one subject, and that shall be expressed in the title."

In construing that section, the Court of Appeals of Kentucky said:

"The design of that provision of the Constitution, which requires that the subject of each act shall be expressed in the title, is to prevent the use of *deceptive* titles as a cover for vicious legislation, by enabling members of the General Assembly to form such opinion of the nature of a bill from merely hearing it read by its title." (Pennington v. Woolfolk, 79 Ky., 20.)

The presumption is, that the members representing Boyd and Elliott, in the Legislature which passed this act, heard the bill read by its title merely. The only opinion they could rationally have formed as to the nature of the proposed law, would have been that it conferred upon those parts of their respective counties, which were taken from Carter, the same power and authority to compromise and settle the claims in question that were conferred upon Carter county, and they would, therefore, have regarded the measure as unobjectionable.

But so far from conferring upon those fractional parts of Boyd and Elliott the authority expressed in the title, the act gives them no authority whatever. The act authorizes the creation of a new debt, to be evidenced by obligations, *unlimited as to amount*, and for the payment of which they and their property are to be bound and to be taxed at the discretion of a foreign agency, without any chance on their part to be represented or heard. The agency referred to was the County Court of Carter county, which, in the very nature of its organization, represented, and had jurisdiction over, the people and property within the limits of that county, and nowhere else, as will be shown hereafter.

It seems clear, therefore, that the act was unconstitutional and inoperative on this ground, if upon no other.

It was suggested in the oral argument in the Circuit Court,

that one part of an enactment may stand, because it is indicated by the title, while as to the object not indicated by the title, it must fail.

Such is undoubtedly the rule; and it has been frequently recognized in Kentucky. But the rule is subject to this important qualification: "A statute may be constitutional in "one part and unconstitutional in another, *where the two parts* "*are separate and independent;* but where they are so related "that the latter is a *condition* of, a compensation for, or *an* "*inducement* to, the former, or where it is obvious the Legis- "lature, having respect to opposing rights and interests, would "not have enacted one but for the other, then the unconstitu- "tionality of *one* part avoids the *entire statute.*" (4 Ky. Law Reporter, 841, and cases there cited.)

Judge Cooley, in his work on Constitutional Limitations (p. 148), states the qualification thus: "If by striking from "the act all that relates to the object not indicated by the "title, that which is left is complete in itself, sensible, *capa-* "*ble of being executed,* and wholly *independent* of that which "is rejected, it must be sustained as constitutional."

No argument is needed to show the application of this qualification to the law in question.

Carter county, a part of Boyd county and a part of Elliott county, were all equally liable upon the bonds to be compromised and settled. The law purported and intended to authorize a compromise and settlement of the entire indebtedness. The Legislature had no authority to place the burden upon either one of the three. Nobody will doubt this. Strike from the law all that relates to the parts of Boyd and Elliott, and that which is left is neither complete in itself, nor sensible, nor capable of being executed, nor wholly nor at all independent of what is rejected; and it is, moreover, perfectly obvious that the Legislature, having respect to the rights and interests involved, would not—indeed could not—have enacted the one but for the other.

But it was said that the defendant was estopped to rely on this constitutional objection, because it *procured* the passage of the act. A very brief notice of this point will be deemed sufficient.

A fundamental rule is that the *facts* constituting the estoppel must always be pleaded. The only attempt at such a plea here is to be found on the 5th page of the record in these words:

"The plaintiff further charges that afterwards, to wit, on the ——— day of January, 1878, the defendant, Carter county, *procured* the passage of an act by the General Assembly of Kentucky, entitled," etc.

If the defendant were an individual this averment would be insufficient, because it is an averment of the mere *conclusion* of the pleader, and not of the *facts* which may or may not justify such conclusion. The acts done by the defendant should be stated, so that the court may determine their legal effect and the defendant be enabled to controvert or explain them. But the defendant here is sued as a "municipal corporation" — "Carter county." Such a corporation can act only through its appropriate officers, the County Court, and they can act only by record. Now if the averment means or implies that the *County Court* of Carter county procured the passage of the act, the record of the court's action ought to have been alleged and exhibited. In a suit upon railroad bonds issued by Washington county, Pa., Judge Greer held that the *county* was but the name under which "a number "of persons, corporators and citizens may sue and be sued. "In deciding the question of jurisdiction the courts may look "behind the name to find who are the *real parties in interest.* "In this case the parties to be bound by the judgment are "the *people* of Washington county." So here, the suit is against *Carter county*, but the people of that county, together with the people of parts of Boyd and Elliott, are the real parties in interest and the parties to be bound by the judgment. It would seem to follow, therefore, that even if the averment could be construed as charging that the County Court, or any other supposed agency, had procured the passage of this law, such procurement would not have estopped the real parties in interest to question the constitutionality of the law. Where did the County Court of Carter derive the power to procure the passage of such an act, with such an effect upon the rights of *people* that were to be bound by it?

II.

I beg to submit, before leaving the constitutional question, a suggestion or two upon this point:

Suppose the act of 1878 had been free from all constitutional objection as to the title; would it even then have been a valid law, capable of being executed?

In 1852, as already shown, the old railroad bonds were issued by Carter county. In 1859 a part of Carter was taken into the new county of Boyd, and in 1867 another part into the new county of Elliott, upon a condition expressed in the law establishing those counties, that the sections mentioned were not to be released from liability on those old bonds.

In all respects and for all purposes the territory of the two sections, and the people upon it, and their property, became as much a part of Boyd and Elliott, and as thoroughly subject to the local jurisdiction of those counties, as if they had never formed part of Carter. The only remaining right of the latter was to require the two sections to contribute, under and according to the acts of separation, to the payment of the bonds of 1852.

"The formation of a new county gives it all the jurisdiction, "civil and criminal, over the territory, persons and property "of individuals within it, which the old county out of which it "has been formed possessed." (Drake's Adm'r vs. Vaughan, 6 J. J. M., 147.)

Such were the legal relations existing between Carter county and the two sections which had been transferred to and formed part of two other counties, the one in 1859, the other in 1867, when the Legislature intervened by the passage of the act January, 1878, which attempts to authorize the County Court of Carter county, on behalf of that county, and also on behalf of the two sections of Boyd and Elliott, to settle and compromise the claims of the holders of the old bonds, with full power to execute new obligations, having the form and effect (*as now contended*) of *commercial securities*, and with power to levy and collect taxes for payment of those obligations, at the discretion of the court; and all this *without the consent* of, or even notice to, the tax-payers included in the counties of Boyd and Elliott.

After an examination as thorough as opportunity allowed, I have found no authority sustaining such an exercise of legislative power. The power of the Legislature to authorize counties, precincts, or other subdivisions of counties, cities, towns, etc., to subscribe stock, execute bonds and impose taxation in aid of railroads, bridges or other *public improvements* in which such local communities have a special interest, is freely conceded. The cases on the subject, in Kentucky and elsewhere, are well understood.

In the case of Allison, etc., vs. Lou. & Harrod's Creek and Westport Railway Company, 9 Bush, 253, a precinct in Jefferson county was authorized to subscribe stock in a railroad company on condition that a majority of its voters should so decide. Litigation ensued, involving the validity of the subscription, and pending that litigation the Legislature amended the charter so as to cure the alleged defects. In considering the effect of that amendment, the court, after conceding the general doctrine, say: "But we are not aware that the doctrine has been carried so far as to authorize the General Assembly to deprive the community subjected to taxation for such purpose of the right guaranteed to all other stockholders of *being heard* in the selection of the officers who are to manage and control its business." (9 Bush, 253). Toward the end of the opinion the court say that its "conclusion is not inconsistent with any right the Legislature may have to impose local taxation for *proper county or municipal purposes* without referring the question to the people to be affected thereby."

In a subsequent case between the same parties (*10 Bush, 1*), it appears that, by an act of 1873, the Jefferson County Court was directed to subscribe for 1,200 shares of stock in said railroad, *on behalf of said Harrod's Creek Precinct*, and to issue its bonds therefor. It was contended that this precinct could not be required, without the consent of a majority of its people or of their local representatives, to become a stockholder in the corporation. The court for the purposes of the case admitted the doctrine contended for to be true, but held that the recital in the preamble to the act, that it was passed *upon the petition* of a majority of the voters and tax-payers of the precinct was, in the absence of allegation or proof to the contrary,

prima facie evidence of the fact, and relief was denied upon that ground.

By an act of March 1, 1865, the County Courts of the counties bordering on the Kentucky river were authorized to subscribe for stock in the Kentucky River Navigation Company. The act made no provision for the submission of the question of subscription to the vote of the people of the several counties. But the validity of the act was upheld upon the theory that the act constituted each of the counties a *quasi* private corporation, with the right to become a stockholder in another private corporation; that each of the County Courts, composed of a majority of the justices of each of the counties, became, under the law, the *representative* of each of said *quasi* private corporations, and each county, therefore, became bound by the act of its representative. (Garrard Co. Court vs. McKee, 8 Bush, 81. See also Mercer Co. Court vs. Ky. Riv. Nav. Co., 8 Bush, 300.)

Suppose the Legislature, instead of conferring this authority upon the *several* County Courts, had attempted to confer it upon one of them—Franklin for example—to be exercised *for and on behalf* of Franklin county, and all the other counties bordering on the river, would the tax-payers of such other counties have been bound by the action of the Franklin County Court in subscribing stock, issuing bonds, and levying the tax?

In every case where a precinct or other subdivision of county has been authorized to aid in the construction of railroads or other public improvements, a right has been given the tax-payers to manifest their assent or dissent by a vote, and such vote is required to be taken under the direction and supervision of its own County Court. The precinct has no corporate or other organization, and the County Court of the county of which it forms a part, being the regularly organized fiscal agency representing the people of the precinct, is the only proper depository of the power. Would anybody maintain, in the Harrod's precinct case, that the Legislature could have authorized Woodford county to subscribe the stock, issue the bonds, and levy the tax, for and on behalf of that precinct, without the consent of its tax-payers or people?

The case at bar is infinitely stronger against the power in

question than any of the classes of cases just referred to. The power of the Legislature to create special districts for certain purposes is readily conceded. "A State tax is to be appor-"tioned through the State; a county tax through the county; "a city tax through the city; while in *the case of local im-"provements*, benefiting in a special and peculiar manner some "portion of the State, or of a county or city, it is competent "to arrange a special taxing district within which the expense "shall be apportioned." (*Cooley on Const. Lim., p. 495.*) There are several such cases in Kentucky and elsewhere, all of which have been upheld upon substantially the same ground. They were all cases of public improvements, conferring or supposed to confer special local benefits.

But the present is not a case of public improvements for local benefits. The act does not create a special district, with corporate, or even *quasi* corporate powers. It creates an agency, clothed with the *judicial* power of compromising and settling a controversy then assumed to exist between holders of certain bonds on the one hand, and three designated divisions of territory, or more properly speaking, the tax-payers inhabiting them. Those territorial divisions are described and treated throughout the act as separate and distinct. Had the Legislature power to clothe Carter County Court with plenary authority to compromise and settle a matter in dispute which involves the rights of people and property not within the territorial limits of that county; and then to execute obligations, binding upon those people, payable at such times, *and for such amounts* "as may be agreed upon by the court and holder or holders of said bonds and coupons?" And all this, too, without notice to those parties, or any opportunity to be heard or to participate in proceedings involving their most important rights.

It will hardly be pretended that such a delegation of legislative authority derives any validity or strength from the circumstance that those parts of Boyd and Elliott formed parts of Carter county at the time the bonds of 1852 were issued. Those bonds constitued the only *contract* that ever existed between those tax-payers and the corporation created by the charter of the Lexington and Big Sandy Railroad, passed in 1862.

When Boyd and Elliott counties were established, that charter had performed all its functions The corporation was practically dissolved. No road had been built, and all effort in that direction had been abandoned. But the contract evidenced by the bonds remained. Provision was made in the laws transferring parts of Carter to Boyd and Elliott for enforcing by taxation whatever duty those bonds imposed upon the people or territory so transferred. To alter or modify *that contract* without THE CONSENT of all the parties whose rights were fixed by its terms, was beyond the scope of legislative power. I can see no escape from this conclusion.

The attention of the court is called to two or three Kentucky cases bearing upon this question :

In Scuffletown Fence Company vs. McAllister, 12 Bush, 312, a number of land-owners were incorporated under the style of the Scuffletown Fence Company, with power to make a fence from the Ohio river to Green river, so as to include the whole of their lands from the fence to the confluence of the two rivers, thereby saving a large annual outlay in erecting fences. The act of incorporation was based upon the *necessity* for such inclosure, and for the exercise of the taxing power, etc.

McAllister owned land within the inclosure, and resisted the enforcement of the law upon the ground that it was unconstitutional.

The court held that the property of the citizen can not be taken, by means of taxation or otherwise, and applied to private use without his consent, upon the idea entertained by the *Legislature* and the corporators that he is deriving a benefit in common with others who are willing to share the benefits with him ; and that to inclose land in order to increase its value, or to lessen necessary expenditures, or to enhance the conveniences of cultivation, can not be regarded as a *public undertaking*, and to impose taxation on such an object against the consent of the citizen ; that the Commonwealth had no power to intervene between the respective owners, in order to determine the *interests* of each or all in the prosecution of their pursuits.

To the same effect is Pearce's Heirs vs. Patton, 7 B. Mon., 162 ; The Cypress Pond Draining Co. vs. Hooper, 2 Met., 350.

In view of these principles, it may be pertinently asked, whether or not the compromise and settlement provided for in the case at bar, and the substitution of a new set of bonds for an old set, can be regarded as a public undertaking; and whether or not the Commonwealth could *intervene* between the bondholders and tax-payers, in order to determine that it would be to the interest and for the benefit of the latter that a new set of bonds should be substituted for the old ones, to make a new contract for the tax-payers who had no part in asking such intervention, no voice in selecting the arbitrator, and no agency in executing the new bonds, and who consented to nothing that was done.

Such intervention was an impairment of the obligation of a subsisting contract, and, to enforce the new contract, made without the consent of, or even notice to, the parties sought to be bound by it, would be the taking of the private property of one citizen for the private use of another, which the Court of Appeals has held to be within the inhibition of the Constitution of Kentucky. (Scuffletown Fence Company vs. McAllister, 12 Bush, 312.)

If these bondholders were actuated by the charitable motive of abating a part of their claim and lessening the burden upon the tax-payers, they had nothing to do but surrender a part of the bonds held by them. Nothing could have been more simple and easy. But a more complicated plan seems to have been preferred. The execution of that plan resulted substantially in a surrender of the old bonds and the execution of new ones representing an amount about half equal to the aggregate amount of the former. Why this unusual display of benevolence? Were the old bonds subject to some infirmity which rendered their validity or enforceability uncertain? Were the new bonds, in the form of negotiable securities, considered free from all objection or doubt, and for that reason, more than sufficient to reimburse every cent that had been paid in the purchase of the old ones?

If I have succeeded in maintaining these propositions, the necessary result will be a dismissal of this action, which is against *Carter county* only. Even if the act be held valid as to that county, still, if not enforceable as against the parts of Boyd

and Elliott, it could not be enforced against Carter alone. Whatever liability was intended to be imposed by the act, it was a common liability, which could not be thrown upon either one of the three classes of persons intended to be bound.

III.

This action can not be maintained, because the bonds and coupons sued on are void for want of power in the Carter County Court to execute them.

For convenient comparison of the bonds with the law under which they purport, on their face, to have been executed, a copy of one of them is here given:

"UNITED STATES OF AMERICA.

"STATE OF KENTUCKY. COUNTY OF CARTER.

"($1000.) (No. One.)

"BOND A. No. 1.

"The county of Carter, and those parts of Boyd and Elliott counties taken from Carter, will pay, one year after date hereof, to Henry Peacher and Richard A. Butler, executors of Joseph C. Butler, deceased, *or bearer*, at La Fayette Bank, *Cincinnati, Ohio*, one thousand dollars, with six per cent. per annum interest thereon from date, interest payable semi-annually, for which interest *warrants are hereto attached* signed by the Clerk of Carter County Court. This bond is executed by order of the Carter County Court, at its June term, 1878, under authority of an act of the General Assembly of Kentucky, approved 30th day of January, 1878, for the purpose in said act specified. Witness the signatures of A. Rucker, Presiding Judge, and E. P. Davis, Clerk of said Carter County Court, with the seal thereof annexed, this 1st day of July, 1878." (Signed and sealed.)

These bonds and the coupons attached are sued on as commercial securities, which pass by delivery, and free from the defenses allowed by our statutes, in the hands of innocent holders.

Had the County Court power to assume them?

This question is to be tested alone by the act of 1878, and the defendant asks nothing more than a fair and reasonable construction of its provisions.

That law delegates to the County Court authority to do three things: First, to compromise and settle a controversy or difference of some sort between the holders of certain bonds and certain tax-payers; second, to execute certain obligations; and third, to levy a tax sufficient to meet those obligations.

Now, what was the object, nature, and effect of those *obligations*. The object of the obligations undoubtedly was to evidence the amount of indebtedness which should be ascertained and awarded in favor of each of the bondholders, as the result of the compromise and settlement. Hence the provision: "Said court may execute to the holders of said bonds and coupons of interest, *severally*, the obligations of said county of Carter, and those parts of the counties of Boyd and Elliott," etc. "Said obligations shall contain such stipulations as may be agreed upon by the court and holders of said bonds and coupons of interest, *or either of them*," etc. Said obligations shall be due and payable at such times, and be for such amounts as may be agreed upon by the court and the *holder or holders* of said bonds and coupons.

Here we have a full, accurate and complete statutory definition of the object, nature and effect of the obligations. The definition is at the same time a limitation. Being complete, it excludes every thing not embraced in it. There is nothing left for implication or construction. The Legislature by this act granted a special power and prescribed the mode in which the selected agent should exercise it. "The power granted must "be exercised substantially in the mode prescribed; the mode "becomes the measure of the power. In the language of Chief Justice Marshall (in Head vs. Providence Insurance Company, 2 Cranch, 169), the act of incorporation is to them (its officers) an enabling act; it gives them all the power they possess; it enables them to contract, and when it prescribes to them a mode of contracting they must observe that mode, or the instrument no more creates a contract than if the body had never been incorporated." (*Burroughs on Public Securities, p. 203.*)

Where in this act, or in any rational interpretation of its intent or meaning, did the County Court of Carter county, or its acting officers, find authority to execute a bond to J. C.

Butler's executors "*or bearer;*" to make it payable at a bank outside of the State; or to execute *coupons* or "*interest warrants*" attached to the bond, and which the holder might also and did place upon the market as commercial securities? Or can it be said that these departures from the prescribed mode are immaterial, or that there is no substantial difference between the obligation authorized by the statute—assignable by our law, but not so as to impair the right to any defense, etc.—and a "bond with interest warrants attached," payable to bearer at a bank in Ohio? The plaintiff, who claims in his petition to be the owner in his own right of seventy-six of these bonds, and of 540 coupons of $30 each, all bearing interest, and all "payable to bearer," would doubtless be able to answer the last question without difficulty, although perhaps not a lawyer.

On the question of the power of corporations to issue negotiable securities, but few authorities need be cited.

It is alleged in the petition that the defendant, "The County of Carter," is a "municipal corporation." County Courts are sometimes so defined in a general way. But the power conferred on the County Court in this instance is a special power, not embraced in any of the ordinary or governmental functions belonging to County Courts. But this is not very material to the present case. Concede that the court did exercise this power as a municipal corporation, had it any *implied* power to issue these bonds?

In Mayor vs. Ray, 19 Wallace, 480, Judge Bradley delivered a very able opinion on this subject. It held that, without express legislative authority, municipal corporations could not issue commercial paper, free from equitable defenses, in the hands of the holders; that such corporations are vested with the *power of taxation* to enable them to perform their functions, and this mode of raising means for this purpose is exclusive of all others; that the officers of such corporations can not by their acts estop the people to show the illegality of paper issued by them; and that while checks and drafts, given to public creditors, *as an evidence of the debt due them*, are valid for that purpose, the holder takes them subject to equities.

Mr. Burroughs, in his work before mentioned, refers to this opinion as "clear, forcible and elegantly written," and quotes from Judge Dillon, who says of it, "that it evinces a thorough comprehension of the whole subject, and, in our judgment, is sound in every proposition it advances, and must become the law of this country." (Burroughs on Pub. Securities, page 191.)

The same author, referring to the case of Police Jury v. Button, 15 Wall., 566, page 193, says: "The court held that the Police Jury, being invested with the usual powers of administration in specific matters, and with power of *levying taxes* to defray the necessary expenditures of their jurisdiction, they had no *implied authority* to issue *negotiable securities*, unimpeachable in the hands of *bona fide* holders, either for the purpose of raising money *or funding a previous debt.* The opinion of the court was delivered by Mr. Justice Bradley. The leading idea is, that these officers are invested by the Legislature with specific powers of local government, and to enable them to raise the means sufficient to perform these functions, they are also vested with the power of taxation. Having express power *to raise funds by taxation*, the law will not imply the power to raise funds by issuing negotiable securities. This is the germ of the subsequent opinion in Mayor vs. Ray, and one follows naturally and logically the other."

There is another well known class of cases which stand on entirely different footing; cases of subscription by counties in aid of railroads. There, "whenever the intention can be clearly gathered from the charter that it was intended to aid the railroad by money or bonds, the power to issue bonds for that purpose has been sustained. A power given in the charter to subscribe to a railroad, borrow money, and impose *future* taxes, authorizes the issue of negotiable bonds by the corporation in aid of the railroad." (Burroughs, 201.) The same doctrines as to implied powers will be found in Jones on Railroad Securities, section 222, etc.

In Gause vs. City of Clarksville (19 Albany Law Journal, 253), Judge Dillon delivered a very strong opinion, containing

a vigorous protest "against the doctrine of implied powers, which is now struggling for admission into our jurisprudence."

But the doctrine has never been applied to a case like the present, in which no aid to any improvement, public or private, is provided for; no borrowing of money for such purpose, or for any purpose. The authority to execute *obligations* is not even alluded to in the title of the act, thus showing that the leading intent was to confer authority to compromise and settle with the holders of the bonds, "*and to levy and collect a tax* FOR THAT PURPOSE." The provision made *for that purpose* by the 2d, 3d and 4th sections of the act, is most ample.

One other suggestion: It will be found that the words "*bonds and coupons of interest*" are used about ten times in the act, and *always* with reference to the old securities of 1852; and that the word "*obligations*" is used about eight times, and *always* with reference to the instruments to be executed by the County Court. Now, was this accidental? Did the Legislature use the phrase and the word in precisely the same sense, although frequently used in contradistinction, the one with the other? I think they were used to indicate two distinct classes of instruments.

There was then no power in the County Court to issue these securities, and as the holders took them with constructive notice of such want of power, they cannot enforce them. (Cooley on Const. Lim., p. 215.)

"If the corporation has no authority to issue negotiable paper, or if the officers who assume to do so have no power under the charter for that purpose, there can be no doubt but that the defense of want of power may be made by the corporation in any suit brought on the securities." (Smith vs. Cheshire, 13 Gray, 318; Gould vs. Sterling, 23 N. Y., 458; Andover vs. Grafton, 7 N. H., 298; Clark vs. Des Moines, 19 Iowa, 209.)

Of course, in cases where the power to issue exists, and the only defect in the security consists in some *extrinsic* fact—such as the purpose or object for which it was issued—the holder would not be bound to inquire as to such extraneous fact. But he is bound to inquire into the *law*, and to ascertain whether it authorized the issue.

If all the foregoing objections should be overruled, I shall

submit, without argument, that the petition is defective in the following particulars:

1. After copying the agreement of compromise and the orders made by the County Court directing the execution of the bonds, the plaintiff avers in the petition "that, by the express terms of each of said bonds, the *defendant* acknowledged itself to be indebted" to the executors of J. C. Butler, deceased, the sum of $1,000, "which *it* undertook and faithfully promised to pay," etc.; and also that defendant likewise undertook and promised to pay the coupons of interest at maturity, etc.

It will be seen by the copy of the bond (p. 16 of this brief) that it contains no acknowledgment, in express terms or otherwise, by *defendant* that it was indebted to anybody, or that *it* would pay any sum. On the contrary, the bond, "in express terms," stipulates that "the county of Carter, *and* those parts of Boyd and Elliott counties taken from Carter, will pay, one year after date," etc., etc.

This variance between the instrument set out and described in the petition, and the bond exhibits, is fatal. (Dodd vs. King, 1 Met., 430; Lusk vs. Anderson's Adm'r, *Ibid.*, 426; 6 Mon., 339.)

2. The petition contains over sixty separate causes of action, attempted to be set out in as many paragraphs. Each cause of action must be distinctly stated. (Civil Code, sec. 113.) The terms and stipulations of each *contract* must be set out in each paragraph; a failure to do so will not be cured by the exhibit. (Hill vs. Barrett, 14 B. Mon., 84; Collins vs. Blackburn, 14 B. Mon., 524; Riggs vs. Maltby, 2 Met., 89; Mountjoy vs. Pierce, 4 Met., 99; 6 Bush, 533; 12 Bush, 325.)

The petition wholly fails to conform to those requirements—notably paragraph sixty.

3. There is an obvious defect of parties defendant. "The county of Carter" was sued alone. "Those parts of Boyd and Elliott counties taken from Carter" were not made parties defendant, nor was judgment asked against them, or against any corporate body having authority to represent them or their tax-payers.

The form of the judgment rendered, and of which the plaintiff in error complains, illustrates the defect insisted upon by

the special demurrer. It was adjudged that the defendant in error recover of "the county of Carter, in the State of Kentucky, the sum of," etc. (Printed transcript, page 60.) The effect of this judgment is to shift the whole burden of the supposed indebtedness from the tax district, by which it was alleged to have been incurred, to another and different tax district.

The tax district composed of the present county of Carter and the parts of Boyd and Elliott counties, contracted the original indebtedness, if it ever was legally contracted. The same district made the compromise, if one was made, and undertook to pay the obligations sued upon, if such obligations are valid and binding in law.

Those obligations are not joint and several in their nature. The holders or owners can not sue all, or any one or more of the supposed obligors, at their election. The obligations, if valid, are to be paid proportionately by the tax-payers of the tax district by which they were issued. The money necessary to pay them must be raised by taxation, and the tax levies, when made, must be co-extensive with the tax district.

If (without suit or judgment) the County Court of Carter county had undertaken to make a tax levy to raise the money to pay the demands of the defendant in error, it would have been compelled to make the levy apply to the property of the tax-payers of the "parts of Boyd and Elliott taken from Carter county," as well as to the property of the tax-payers of Carter county. A levy confined to the tax-payers of the latter county would have been void, for the want of constitutional equality and uniformity. The State Legislature could not have so changed the law as to the apportionment of the burden, and the mode of making the levies, as to compel the tax-payers of Carter county to pay the whole of this supposed indebtedness. An act of the General Assembly attempting to impose the whole burden of these bonds and coupons upon the tax-payers of Carter county would have been unconstitutional and void. In Kentucky "*taxation may not be universal, but it must be general and uniform.*" (Lexington vs. McMillon's Heirs, 9 Dana, 513.) And this, whether

the tax extends to the whole State or to a local subdivision of the State. (Howell v. Bristol, 8 Bush, 493.)

If the obligation rests upon a tax district, then all the tax-payers, and all the taxable property of the district, must be equally and uniformly taxed. (Gilman vs. Sheboygan, 2 Black., 510.) The accidental omission of taxable persons or property from the tax roll may not vitiate it; but where the omissions are intentional they render the levy void as to all the tax-payers. (Weeks vs. Milwaukee, 10 Wisconsin, 242.) If the Legislature could not have transferred the whole burden of the alleged indebtedness to the tax-payers of Carter county, it seems to follow, necessarily, that the Circuit Court had no such power.

Yet the defendant in error sued the county of Carter alone, and the Circuit Court adjudged that "the plaintiff, David Sinton, recover of the defendant, the county of Carter, in the State of Kentucky, the sum of twenty-nine thousand one hundred and twenty-one dollars and fifty-four cents ($29,121.54), with interest thereon *after* the rate of six per centum per annum from the 16th day of June, 1885, till paid, together with his costs herein expended, for which the writ of *fieri facias* may issue."

This judgment binds the present county of Carter. It shifts the burden of the whole indebtedness upon it and its tax-payers, and in effect releases the tax-payers of "the parts of Boyd and Elliott counties" of any further obligation to pay.

If the writ of *fieri facias* be not satisfied, and a tax be levied to pay the judgment, the levy can not extend to the tax-payers living in the said "parts of Boyd and Elliott counties," because the judgment is not against them, and they were not parties to the action in which it was rendered.

The obligations which, it is claimed, bound those tax-payers at the outset, have been merged in the judgment against Carter county.

These tax-payers can not now be taxed to pay the defunct obligations; nor can they be taxed to pay a judgment which binds Carter county and its tax-payers, and no one else. If the special demurrer had been sustained, and the defendant in error compelled to make the "parts of Boyd and Elliott counties

taken from Carter" parties defendant to his action, all this confusion would have been avoided, and the substantial rights of the tax-payers of Carter county to be protected against being compelled to pay more than their proportionate shares of the alleged indebtedness would have been preserved.

4. The Circuit Court erred in striking out and sustaining demurrers to all the answer of the plaintiff in error, except paragraph 12. So much of the answer as denied that Carter county *procured* the passage of the act of 1878, under which alone the defendant in error claims, and also denies the alleged judgment for $81,373 83, was undoubtedly good. (Pages 54, 55, and 58 of record.)

It will be observed that the plaintiff in error was permitted, on the trial, to amend his answer, by denying that the defendant in error ever purchased for value, or before their maturity, certain of the bonds and coupons sued on, which are set out in the answer, and averred that those bonds and coupons were placed in the hands of defendant in error "merely to enable him to collect the same by means of this action" for the benefit of another person, who was the beneficial and real owner. The objection to the filing of this amendment having been overruled, the defendant in error *thereupon*, and for that reason, *discontinued* his action as to said bonds and coupons. (Record, pages 58, 59.)

For the several errors herein pointed out, the plaintiff in error asks that the judgment of the Circuit Court be reversed.

WILLIAM LINDSAY,
A. DUVALL,
For Plaintiff in Error.

120-517

JAN 3 1887
JAMES H. McKENNEY
CLERK

Robert Clarke & Co., Printers, Cincinnati.] [December, 1886.

IN THE

Supreme Court of the United States.

The County of Carter,
Plaintiff in Error,

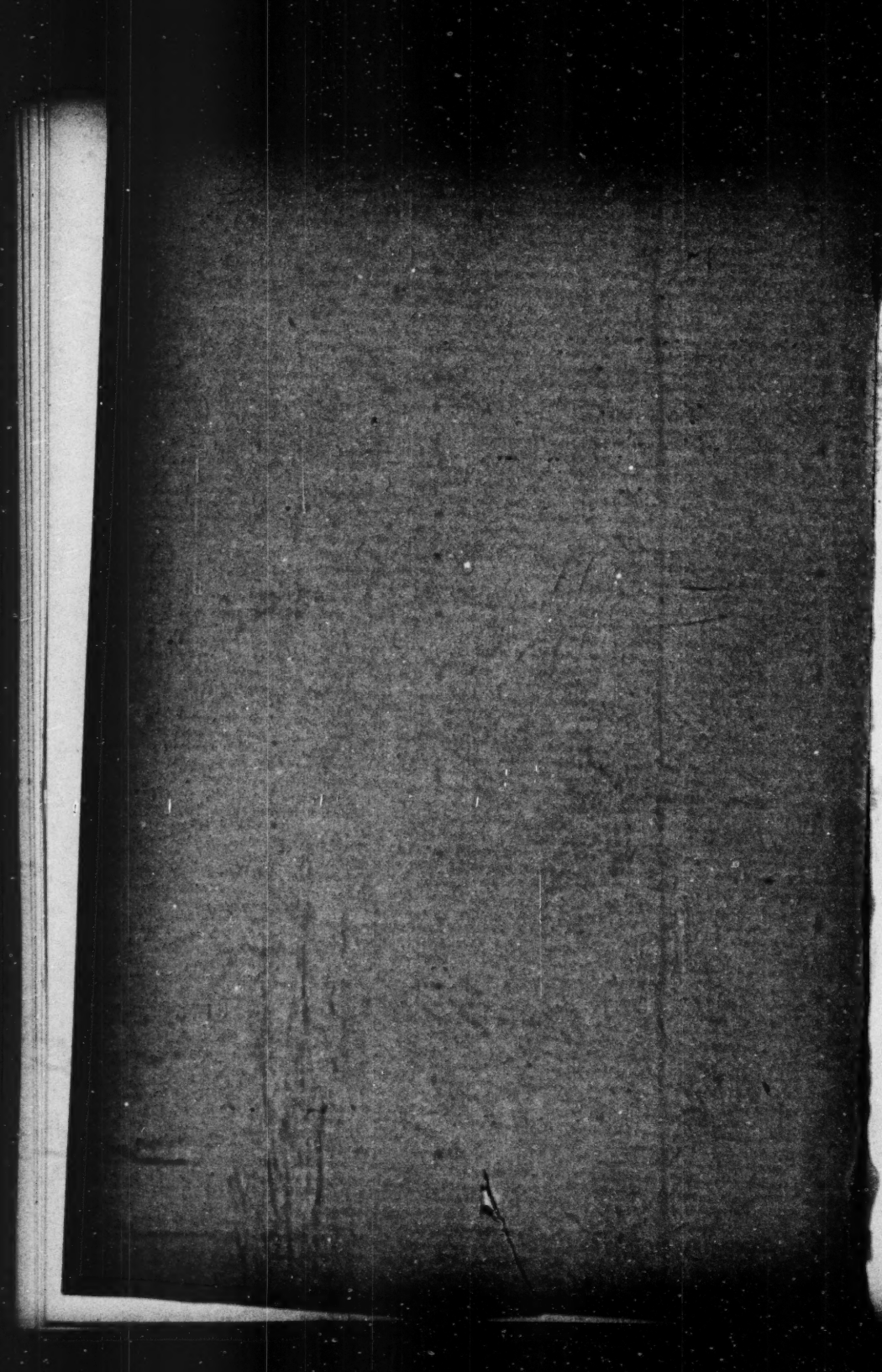
vs.

David Sinton,
Defendant in Error.

Error to the Circuit Court for the District of Kentucky.

BRIEF FOR DEFENDANT IN ERROR.

HOADLY, JOHNSON & COLSTON.



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BRIEF FOR DEFENDANT IN ERROR.

HOADLY, JOHNSON & COLSTON.

This case is, by stipulation of counsel, submitted to the court, upon briefs filed under the *twentieth* rule.

The judgment sought to be reversed was rendered by the Circuit Court for the District of Kentucky, at Covington, at the May term, 1885, in the sum of $29,121.54 damages, and $137.75 costs, and bears interest from June 16, 1885, in favor of David Sinton, in an action brought by him at law against the county of Carter.

The petition, (Record, 3,) filed November 1, 1884, contains sixty counts or paragraphs, stating sixty causes of action. But as all these, except the first, relate to mere

matters of detail, the attention of the court need be called only to the *first* count.

This states that under an act of the Legislature of Kentucky, to incorporate the Lexington and Big Sandy Railroad Company, approved January 9, 1852, and an amendatory act, approved March 1, 1854, Carter county was authorized to subscribe to the capital stock of that company, and to borrow money to pay for the same, and to issue bonds for $75,000, bearing interest, as security for the loan. That the county did subscribe said sum, and by order of the Carter County Court executed and delivered seventy-five bonds for $1,000 each therefor, by the terms of which it undertook to pay said sum to said company, or to any person to whom said company should order payment, thirty years from date, with interest payable semi-annually at the rate of six per cent per annum at the Bank of America, New York City, evidenced by coupons payable to bearer. That the company sold and delivered part of said bonds in market overt to unknown persons, and, by indorsement in blank, on said bonds, under its corporate seal, made the same payable to bearer. That Joseph C. Butler and Lewis Worthington, before maturity and for value, became respectively holders, Butler of sixty-four and Worthington of ten of said bonds, and that in 1878 Worthington transferred his ten bonds to the executors of Butler. That suit was brought in the Circuit Court of the United States for the District of Kentucky by Butler in his life-time to recover accrued interest on his sixty-four bonds, in which, after his death, his executors recovered judgments against Carter county for $81,373.83, with interest from May 30, 1874, and $64 costs, and for $36,519.40, with interest from April 15, 1876, and $66.15 costs. That in January,

1878, Carter county procured the passage of an act entitled

"an act authorizing the county of Carter and those parts of Boyle and Elliott (counties) taken from Carter county to compromise and settle with the holders of the bonds and coupons of interest executed by Carter county in its subscription to the capital stock of the Lexington and Big Sandy Railroad Company, and to levy and collect a tax for that purpose."

That by this act, approved January 26, 1878, the defendant was empowered to issue the bonds of Carter county and those parts of Boyle and Elliott counties taken from it, bearing interest, to the executors of Butler. That, accordingly, by order of the Carter County Court, the defendant executed 119 bonds, dated July 1, 1878, under its corporate seal, payable to said executors or bearer. The report of the commissioner appointed to compromise with Butler's executors, and the order of the County Court approving the same, are set out in full in the petition. (Record, 6–8.) That in May, 1879, by another order of said County Court, set out in full in the petition, 16 other of said bonds were executed under the corporate seal of said county, payable to said executors or bearer. The respective amounts and dates of maturity of said several bonds and of the coupons thereto annexed are stated in detail in said petition.

The petition further avers that said 119 bonds were delivered to and accepted by said executors in settlement of the said 64 bonds and 10 bonds, and the interest thereon, and in discharge and payment of the *pro rata* of said judgments, which bonds were thereupon surrendered, and said judgments *pro tanto* canceled, and said 74 bonds were then, by order of said County Court, made May 12, 1879, and copied in the petition, burned and destroyed. (Record, 10.)

The petition further avers (Record, 10,) that after the

subscription had been made to the capital stock of the Lexington and Big Sandy Railroad Company, and the 75 bonds had been issued, the counties of Boyd and Elliott were created by law, each containing part of Carter county as previously constituted, but it was provided in the acts establishing said counties of Boyd and Elliott that nothing therein contained should operate to release the territory, property and tax-payers so taken from Carter county from liability, or exempt them from paying said bonds and coupons.

The petition further avers that the executors of Butler sold part of said second issue of bonds in market overt to divers unknown persons, and that the plaintiff, Sinton, before maturity and for value, purchased and now holds and owns 76 of said bonds (stating their numbers), together with 540 coupons thereto attached, maturing respectively January and July 1 of each year from January 1, 1879, to July 1, 1884. That 25 of said bonds are past due and unpaid, with the interest coupons thereto annexed.

The residue of the petition is taken up in stating the amounts of each bond and coupon which has matured, and in prayer for judgment for the amounts thereof.

To this petition the defendant demurred generally and specifically, to the whole petition and each paragraph, (Record, 45,) and the demurrer having been overruled, it then filed an answer (Record, 51, 54,) of twelve paragraphs or defenses. The plaintiff afterward abandoned his action and discontinued its prosecution as to the bonds described in the 12th paragraph, so that no attention need be given thereto by this court. (Record, 58.)

The paragraphs numbered 2, 3, 4, 6, 7, 9, 10 and 11 were stricken from the answer on motion of plaintiff's counsel, as not presenting any traversable issue. (Record, 57.)

Of these, the *second* (Record, 54,) refers to the acts of January 9, 1852, and March 1, 1854, which authorized the original subscription, as best showing their own provisions, and submits to the court all questions arising upon said acts, and of the effect and construction of the bonds, and denies that the bonds were authorized by the acts.

Obviously this was not a pleading of fact, but only a repetition of the overruled demurrer.

The *third* (Record, 54,) admits the company's sale or attempt to sell the bonds in open market, but avers it had no power, under its charter or amendment, to transfer legal title, and that no legal title was transferred to Butler or Worthington. This again is a pleading of law, not fact.

The *fourth* (Record, 55,) admits that Butler and Worthington obtained possession of the bonds, but whether they purchased for value before maturity, and whether Worthington transferred or delivered the ten bonds to Butler's executors, defendant avers that it does not know, nor has it information enough to form a belief.

An averment of want of knowledge, or information enough to form belief, is, in point of form, a good answer according to the Kentucky code. But the averments thus traversed were unnecessary to the plaintiff's case, and the issue, if accepted, is quite immaterial. As Butler's executors had to surrender and did surrender the specified bonds and coupons, as the compromise cancelled them as far as Carter county and the fragments of Boyd and Elliott are concerned, the facts, if admitted, that Butler and Worthington bought their bonds and coupons for less than value, or after maturity, have no bearing on the rights of the present parties. These averments might have been coupled with others so as to state a defense to the original bonds. Alone, and by themselves, they amount to nothing in a case like

this. Such averments may prevent the plaintiff, if he have notice, in an action upon negotiable paper, from avoiding a defense which existed between the original parties. They are the spectacles which enable the court to view the original equities and defenses. As none such are stated in paragraph 4, they may be consigned to the spectacle case as useless on the present occasion.

As to the other denial contained in this answer, it will be observed that there is no denial of the averment of the petition that the original bonds were made payable to bearer, and no denial that Butler's executors held their possession, and were able thereby to deal with them as apparent owners. The denial relates not to the fact of title or possession of Butler's executors, but to the manner in which they acquired it. Having admitted, by not denying, that the bonds were payable to bearer, and that Butler's executors put them into the compromise, and that they were surrendered and burned, the question how they acquired such power over the bonds, whether by transfer and delivery from Worthington or another, is immaterial. These are questions between Worthington and Butler, and their representatives, and not between the latter and Carter county. The county had a right to compromise with the holders of the bonds and coupons, even though such holders might be required to respond over to others for the proceeds of such dealings. To make this defense available, the pleader should have further averred that Worthington gave no authority to make the compromise, or that Butler's executors were not holders of the bonds and coupons, and that Simon acquired the bonds now sued on with full knowledge of these facts. Neither of these were claimed.

In *Vanbuskirk* v. *Levy*, 3 Metc. (Ky.) 133, it was held, Duvall, J., pronouncing the opinion, that an answer,

"denying that the plaintiff was the holder and owner of the note sued on, and averring that it had been assigned by the plaintiff to another by deed for the benefit of creditors, may be regarded as a dilatory plea; not, however, resulting, even when sustained by proof, in a dismissal or abatement of the action, but furnishing ground for an order of court, requiring the additional party to be made on pain of dismissal without prejudice. The defect of parties not appearing in the petition is properly taken by answer, which, although presenting nothing in bar of the action, presents an obstacle to a recovery until the necessary party is made. 17 B. Mon. 602.

The issue, *supra*, is triable by the court and not by the jury, and the *onus probandi* is on the party making the objection.

Where the answer of the defendant controverts none of the facts alleged in the petition, which fix his liability as indorser, or as the assignor for value of the note sued on, but merely denies that the plaintiff was the holder and owner of the note, and alleges that it had been assigned to another, and the objection is not sustained by proof, the court should render judgment on the merits without the intervention of a jury."

The *fourth* defense fell far short of this. It did not aver that Worthington or any one but Sinton held or owned or had any interest in the bonds sued on. The special demurrer filed to the petition was for defect of parties, plaintiff and defendant. As the petition failed to disclose any such defect, it was properly overruled. Under *Vanbuskirk* v. *Levy*, if the defendant desired to dispute Sinton's title, it should have averred the defect, and named the necessary co-plaintiff, or the proper party in whose name the suit should have been brought for the whole or any part of the bonds. It has always been a cardinal rule of pleading that

"pleas in abatement must give the plaintiff a better writ or declaration." Stephen on Pleadings, *432.

Another fatal objection to the *fourth* defense is, that it fails to controvert the averment of the petition, (Record, 55,) that Sinton is a purchaser of the bonds sued on for value before maturity, or to allege that he took with notice of the defense.

The *sixth* defense (Record, 55,) denies that Carter county procured the passage of the act of 1878, and avers that when that act was passed, the validity of the bonds was and had been for many years in dispute, that their holders had purchased them at much less than value, were doubtful of their legal right to collect, and had more interest than the county to compromise.

This is frivolous and immaterial.

The *seventh* defense (Record, 55,) admits that defendant was empowered to issue the bonds of Carter county—and those parts of Boyd and Elliott counties which had been taken from Carter—in settlement of the bonds of 1852, but avers that this power was exceeded by making the bonds payable to bearer, and executing coupons payable to bearer.

This is, in substance, the demurrer repeated.

The *ninth* defense (Record, 56,) denies that the sixteen bonds were executed or delivered under any power conferred by the act of 1878; but, on the contrary, they were in violation and disregard thereof, as shown by the orders of court contained in the petition.

This is again a demurrer.

The *tenth* defense (Record, 56,) denies that, by the express terms of any of the bonds, the defendant acknowledged itself indebted to Butler's executors in $1,000, and refers to the bonds as best showing their own form and effect: denies that said bonds were tendered or accepted in payment of said sixty-four bonds or said ten bonds, or the alleged *pro rata* of said judgments, but only in conformity with said

compromise which said County Court attempted to make under said act of 1878.

This, if not wholly immaterial, is, in effect, a demurrer.

The *eleventh* defense (Record, 56,) refers to the acts creating Boyd and Elliott counties as best showing their meaning, construction and proper effect.

This, if any thing, is a demurrer.

It is obvious that, irrespective of the questions presented by the demurrer, which we shall discuss hereafter, none of these paragraphs were in the nature of a defense arising upon matters of fact, and they were properly stricken from the answer. The demurrer had been overruled before this (so called) answer was filed, and it was in disrespect, if not contempt of the court, to repeat it in this way.

To paragraphs 1, 5, and 8 of the answer, the plaintiff demurred specially, (Record, 58,)

"As not presenting any issue of fact traversable by a jury, and not traversing the material allegations of plaintiff's petition."

The court sustained this demurrer, and allowed twenty days for amendment of the answer, but the defendant did not amend. The *first* defense (Record, 54,) denies

"that it is or was indebted to the plaintiff in the alleged sum of $44,800, with interest, as alleged, or in any other sum."

This is merely the denial of a conclusion, and has, therefore, only the effect of a demurrer.

The *fifth* and *eighth* defenses present substantially the same questions, and we shall discuss them together.

The *fifth* defense (Record, 55,) admits that Butler brought suits in the Circuit Court of the United States, at Covington, on the coupons attached to the bonds, (but denies that they were brought on the bonds themselves,) one of said suits in or about 1874, and the other about two years later; that in the latter, judgment was duly rendered in favor of Butler's executors for $36,519.40, with interest and costs as alleged; but denies that, in the former, or any other suit, judgment was entered for $81,373.83, with interest and costs, or any other sum, in favor of said executors against defendant Carter county.

The *eighth* paragraph of the answer (Record, 55, 56,) admits that the petition correctly sets out the orders of the Carter County Court, including the agreement between Commissioner Ward and Butler's executors; files the order appointing Ward as part of the answer; avers that the consideration moving from Butler's executors, and to the county for its agreement, and the execution of said delivery of its bonds was the surrender to the County Court of sixty-four bonds and all unpaid coupons thereon, and the *pro rata* of sixty-one bonds in said two judgments; that the ratification by the County Court and the execution of the bonds was made under the belief that the alleged judgment for $81,373.68 and interest had in fact been rendered, whereas it had not and has not been rendered, and that said agreement, ratification, and execution and delivery of said bonds were the result of a mutual mistake as to said facts, and that the bonds sued on were executed and delivered without consideration to the extent of the alleged amount or value of said judgment.

We print the Kentucky act of January 30, 1878, as far it relates to this controversy, as an appendix to this brief (*post*, p. 18.) The omitted sections, (the second, third, and

fourth,) provide only for the necessary taxation to pay the interest and principal of the bonds authorized by the act. An examination of this act shows that the averments of the petition to which the *fifth* and *eighth* defenses apply were not necessary or material to the plaintiff's case. The alleged fact sought to be utilized by these defenses is that the alleged judgment for $81,373.83 was not in fact recovered. It is also claimed in the *fifth* defense that the suit of Butler and his executors was brought on coupons and not on bonds. But admitting, as the demurrer did, that this is so, what difference does it make? This suit was brought on bonds issued by authority of a special act. The act does not refer to the alleged judgment. It authorizes the Carter County Court

"to compromise and settle with the holders of the bonds and coupons of interest executed by Carter county in its subscription to the capital stock of the Lexington and Big Sandy Railroad Company."

Whether the bonds and coupons held by Butler's executors had, in whole or in part, been reduced to judgment or not, did not take the securities out of the purview of the act, and render it illegal to compromise the claim upon them. On the contrary, it does not seem to be denied that the coupons merged in the judgment for $36,519.40 were proper subjects of the compromise under the act. The act is not for the compromise of judgments, but of bonds and coupons. If the bonds and coupons supposed to have been merged in the judgment for $81,373.83 were not in fact so merged, then they were still "bonds and coupons of interest," and within the very letter of the law. The mistake, if it were such, did not affect the consideration of the compromise, for the bonds and coupons supposed to have been merged,

were canceled by it. And for the same reason, the mistake, if at all, was at an immaterial point, and can not be used to avoid the compromise.

Moreover such mistake, even if effectual between the parties to the compromise, is no defense against Sinton as long as the averment of the petition, that he bought the bonds sued on, for value before maturity, remains without a denial.

The answer having been thus disposed of, and no amendment made, except to the *twelfth* defense, and the action having been dismissed without prejudice as to the bonds and coupons described in the *twelfth* paragraph of the answer, the cause came on further to be heard in the Circuit Court on June 16, 1885, when judgment was rendered (Record, 60,) in favor of the plaintiff upon the nine bonds and five hundred and twenty-five coupons, as to which the action had not been discontinued, for $29,121.54.

This brings us to what are supposed to be the merits of the defence as presented by the demurrer to the petition.

I.

It was claimed in the Circuit Court, and we suppose will be argued here, that the act of 1878 is in conflict with the provision of the Constitution of Kentucky, that

"no law enacted by the General Assembly shall relate to more than one subject and that shall be expressed in the title."

It has been held in Kentucky that a liberal construction of this provision is not only consistent with the object

sought to be accomplished thereby, but would be found necessary to the practical business of legislation.

Chiles v. *Drake*, 2 Metc. 149–151.
Turnpike Co. v. *Ballard*, 2 Do. 168.
Phillips v. *Bridge Co.*, 2 Do. 221.

The remark made in *Turnpike Co.* v. *Ballard*, *ut supra*, may be well applied to the present case:

"Any construction which would bring this act within the constitutional restriction referred to, would expose almost every legislative act containing more than one section to the same objection."

In *Phillips* v. *Bridge Co.*, *ut supra*, Chief Justice Simpson, after referring to the prevalent habit of connecting, in legislation:

"Subjects which had no relation to each other, and which were wholly dissimilar, and unconnected,"

1868, that a county judge was a proper agent to subscribe for stock in a railroad company on behalf of citizens of part of a county, and to be paid by tax on the property embraced in such part only.

In 1869, it had been decided, in *Bracken County Court* [redacted] *County Court*, 6 Bush, 69, that the Robertson matter is connected, and may be properly [redacted] same act."

See also Cooley on Constitutional Limitations, 142, *et seq.*

An examination of the act now under consideration discloses that it in fact relates to only one subject, which is fully expressed in the title.

II.

It was further claimed in the Circuit Court that the County Court of Carter, composed of the county judge and the acting justice of the peace of Carter county, could not be lawfully invested with the power to make a compromise binding the fragments of Boyd and Elliott, which were, at the time of the original issue of bonds, parts of Carter county.

No doubt is suggested of the validity of the original subscription, or that it imposed liability upon all of Carter county as it then existed. Boyd county was created by act of the General Assembly in 1859, after the issue of the original bonds (Session Acts, 1859–60, 9–34). Elliott county was created in 1869 (Session Acts, 1869–70, 72).

In each of these acts was inserted the following proviso:

[redacted]

of the defence as presented by the demurrer to the petition.

I.

The obvious effect of this was to retain the territorial fragments, which, for other purposes, or, it may be said, for purposes of county organization and government generally, became parts of Boyd and Elliott, within Carter county, and to justify the delegation of the power in quetsion to the Carter County Court.

The act of 1878 was not the act of Carter county, but of the General Assembly of Kentucky. The latter is vested

with "the legislative power" of the state, not withheld in the constitution by express inhibition. (Constitution of Kentucky, Article 1, Section 1, and Article 2, Section 1.)

It is not believed that our distinguished adversary can point to any provision of the Constitution of Kentucky which is violated, either expressly or by implication, by the act of 1878. The debt was due by Carter and parts of Boyd and Elliott counties. It was just that the tax-payers of these counties should pay it. *A fortiori* it was right that they should pay a smaller sum, which might be agreed upon, by way of compromise. The selection of the agent to carry out these righteous purposes of the law-making power was left wholly to those who exercised that power in 1878. Their discretion was supreme in this particular. And they were not without advice as to their powers from the highest judicial authority in the state.

In *County Judge of Shelby County* v. *Shelby Railroad Co.*, 5 Bush, 225, the Court of Appeals had decided, in 1868, that a county judge was a proper agent to subscribe for stock in a railroad company on behalf of citizens of part of a county, and to be paid by tax on the property embraced in such part only.

In 1869, it had been decided, in *Bracken County Court* v. *Robertson County Court*, 6 Bush, 69, that the Robertson County Court was bound to levy taxes on the part of Robertson which had been taken from Bracken, and pay the same over to the Bracken County Court, to an amount fixed in the act creating Robertson county ($500 per annum for four years). The opinion in this case fully sustains (page 73),

"the legal power in the legislature to authorize the levy of a tax on the people of a subdivision, when they are the pecuniary beneficiaries of its outlay."